

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term 1911

No. 175

THE AMERICAN SERRANO RANCH CO.
PLAINTIFF IN ERROR

vs.
THE COMMONWEALTH OF CALIFORNIA

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF CALIFORNIA

WRIT OF HABEAS CORPUS

(1911)

(23,695)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 556.

THE AMERICAN SEEDING MACHINE COMPANY,
PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.

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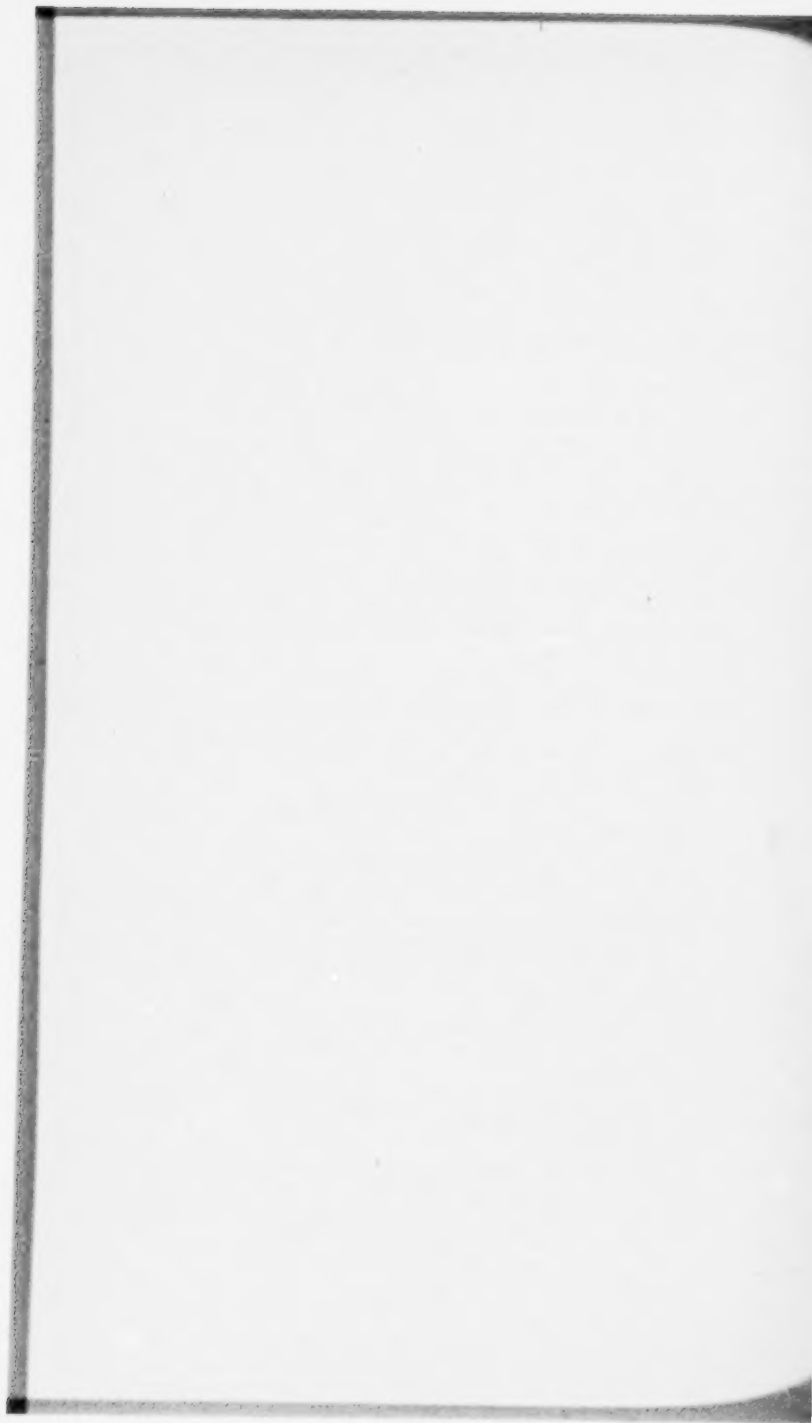
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1 COMMONWEALTH OF KENTUCKY:

The Court of Appeals.

Pleas Before the Honorable the Court of Appeals of Kentucky, on the 4th Day of March, A. D. 1913.

THE AMERICAN SEEDING MACHINE COMPANY, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Barren Circuit Court.

Be it remembered that heretofore, to-wit on the 26th day of August, 1912, the appellant, The American Seeding Machine Company, by its counsel, filed in the office of the Clerk of the Court of Appeals, a transcript of record and evidence in words and figures, following to-wit:

2 Before Hon. S. E. Jones, Judge of the Barren Circuit Court, at the Court-house in Glasgow, Kentucky, the Following Proceedings Were Had in the Case Therein Pending, Wherein The Commonwealth of Kentucky is Plaintiff and The American Seeding Machine Company is Defendant.

Barren Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
AMERICAN SEEDING MACHINE COMPANY, Defendant.

Petition.

The plaintiff, Commonwealth of Kentucky, says the defendant, American Seeding Machine Company, is now, and has been continuously, for many years last past, a corporation, incorporated under the laws of the State of Ohio; and defendant has, for many years continuously, been engaged in business in this State, and in Barren County, Kentucky.

Plaintiff says that in Barren County, Kentucky, the defendant, within one year before the filing of this petition, unlawfully and willfully entered into, and became a member of a pool, trust, combine, agreement, confederation, or understanding, with the Hoosier Drill Company, of Richmond, Indiana; Superior Drill Company, of Springfield, Ohio; Kentucky Drill Company, of Louisville, Kentucky; Big Ford & Huffman Company, of Massillon, New York; and the Buckeye Drill Company, that is, P. P. Mast Company, of Springfield, Ohio—some of the above named companies being corporations and some being joint stock companies, but which are

corporations and which joint stock companies plaintiff does not know; nor does it know in what States or State those that are corporations are incorporated—for the purpose of regulating, controlling, and fixing the price of fertilizers and grain drills; seeders, transplanters; disk harrows; potato diggers; potato planters; land rollers and clod crushers, and repairs of same, manufactured and produced or to be manufactured and produced by them; and to enhance the cost of said articles above their real value.

Plaintiff says that said defendant did, in Barren County, Kentucky, within one year next before the filing of this petition, in pursuance of said unlawful pool, trust, combination, agreement, confederation, and understanding, regulate, control and fix the price of fertilizers; grain drills; seeders; transplanters; disk harrows; potatoe diggers; potatoe planters; land rollers, and clod crushers, and repairs of same, manufactured by said defendant and by aforesaid joint stock companies, and by aforesaid corporations, and did enhance the price of same above their real value, and did offer for sale and sell the aforesaid machinery in Barren County, Kentucky, within one year before the filing of this petition, at a price in excess of the real value of aforesaid machinery; and this was all done, unlawfully, and willfully, by said defendant, in pursuance of said unlawful trust, combine, agreement, confederation, and understanding, hereinbefore set out; and all in violation of the Statutes in such cases made and provided, and by reason thereof the defendant became indebted to the plaintiff in the sum of Five Thousand (\$5,000) Dollars.

Wherefore, plaintiff prays judgment against the defendant in the sum of Five Thousand Dollars, and for its costs herein expended, and for all proper relief.

FRANK E. DOUGHERTY,
*Commonwealth's Attorney, 10th Judicial
District of Ky.*

Filed Nov. 16th, 1911.

Attest:

J. H. BOHANNON, *C. B. C. C.*

By J. B. LESSENBERRY, *D. C.*

4 The Commonwealth of Kentucky to the Sheriff of Jefferson County:

You are commanded to summon American Seeding Machine Company to answer, in 20 days after the service of this summons, a petition filed against it in the Barren Circuit Court, by Commonwealth of Kentucky, and warn it, that upon its failure to answer, the petition will be taken for confessed, or it will be proceeded against for contempt, and you will make due return of this summons within 20 days after the service thereof to the Clerk's office of said Court.

Given under my hand, as Clerk of said Court, this 16th day of Novr., 1911.

J. H. BOHANNON, *Clerk,*
By J. B. LESSENBERRY, *D. C.*

Came to hand Nov. 17, 1911, at 3 P. M.

Executed Nov. 18, 1911, on American Seeding Machine Co., by delivering a copy of the within summons to George D. Rogers, agent of said Company, he being chief officer found in this county at this time.

A. M. EMLER, S. J. C.,
By C. GEORGE BONTEILLER, D. S.

5 Barren Circuit Court, July Term, July 2nd, 1912.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACHINE Co., Def't.

Ord.

Came Frank E. Dougherty, Commonwealth's Attorney, and produced and filed his statement herein, and moved the Court for an order requiring the personal attendance in this court of A. G. Munn, Mac Crenshaw and Herbert Buffemeyer, of Jefferson County, Ky., S. C. Bridwell and Tom Coleman, of Bullitt County, S. C. Donaby, of Fayette County, Ky., A. H. Miller, of Hardin County, Ky., Jo Lucas, of Franklin County, Ky., B. P. Grigsby, Jr., and C. R. Barnes, of Nelson County, Ky., as witnesses for the plaintiff herein; and the Court sustained said motion, and it is ordered by the Court that A. G. Munn, Mac Crenshaw and Herbert Buffemeyer, S. C. Bridwell, Tom Coleman, S. C. Donaby, A. H. Miller, Jo Lucas, B. P. Grigsby, Jr., & C. R. Barnes personally appear in the Barren Circuit Court on the 8th day of its present July Term, 1912, July 9th, 1912, to testify herein for the plaintiff, and they shall not depart without leave of the Court.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACHINE Co., Def't.

Ord.

6 Frank E. Daugherty, Attorney for Plaintiff, states that the testimony of A. G. Munn, Mac Crenshaw and Herbert Buffemeyer, of Jefferson County, Ky., S. C. Bridwell and Tom Coleman, of Bullitt County, S. C. Donaby, of Fayette County, A. H. Miller, of Hardin County, Jo Lucas, of Franklin County, B. P. Grigsby, Jr., and C. R. Barnes, of Nelson County, is important and that the just and proper effect of the testimony of these witnesses cannot in a reasonable degree be obtained without an oral examination in Court, and he asks an order requiring the personal presence of the above named witnesses in this court on the 8th day of the present term, the day set for the trial of this action.

FRANK E. DOUGHERTY,
Com'ltt Att'y, 10 Dist., Ky.

Barren Circuit Court, July Term, July 6th, 1912.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACHINE Co., Def't.

Ord.

On motion of the County Attorney, it is ordered that a subpoena duces tecum issue for F. N. Bradford, witness for Pl'ff herein, commanding him to produce in this court, on the 8th day of the present term of Court, all contracts between the American Seeding Machine Company & Bradford Bros.

7 Barren Circuit Court, July Term, July 9th, 1912.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACHINE Co., Def't.

Ord.

Came the Com'w'lth's attorney and produced and offered to file herein his Amended Petition, to the filing of which was objected — by defendant; and the Court, being advised, overruled the objections, and it is ordered that said Amended Petition be filed, to which the def't excepts.

Barren Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
THE AMERICAN SEEDING MACHINE Co., Defendant.

Amended Petition.

Now comes the plaintiff, Commonwealth of Kentucky, before answer filed or plea entered, and amends its petition herein by inserting after the words "P. P. Mast Company of Springfield, Ohio," on the first page of petition the words, "and other companies or corporations with names of which are unknown to plaintiff and the places where said companies or said corporations are formed are unknown to the plaintiff.

Wherefore plaintiff prays as in its original petition.

FRANK E. DOUGHERTY,
Commonwealth's Attorney, 10th Judicial District.

8 Barren Circuit Court, July Term, July 10th, 1912.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACH. CO., Def't.

Ord.

On motion of the Comwlth.'s Attorney, it is ordered by the Court that Sam W. Eskew, the Special official stenographer of this Court, take down a true, full and complete stenographic report of the evidence given upon the trial of this case at the present term of this court.

Barren Circuit Court, July Term, July 19th, 1912.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACHINE CO., Def't.

Ord.

This day came the Comwlth.'s attorney, and the defendant by attorneys, and the defendant, by attorney, produced and filed herein its general demurrer to the petition herein, and without waiving same filed its special demurrer to said petition, and the Court, having considered thereof, it is ordered that said general and special demurrer be overruled; to which the defendant excepts. And the parties announced ready for trial, and the defendant plead not guilty of the offense charged in the petition; and thereupon came the following jury, to wit: W. T. Kidd, W. T. Parrish, W. G. Toombs, J. W. Myers, R. E. Richardson, H. K. Wilborn, E. J. Davidson, W. G. Dougherty, J. N. McConnell, I. H. Briggs, J. F. Berry and T. J. Dickerson, who were duly empaneled and sworn to try the issue joined, and a true verdict render; and, having heard the evidence in part, and not having time to further proceed with the trial of this case, the Jurors, under the admonition of the Court, are excused until tomorrow morning at 8 1/2 o'clock.

Barren Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
AMERICAN SEEDING MACHINE CO., Defendant.

Demurrer.

The defendants demurrers to the plaintiff's petition in the above entitled action upon the ground that the same does not state facts sufficient in law to constitute a cause of action, and for the following reasons among others:

Sections 3915 and 3941a, of the Kentucky Statutes, as construed and applied by the Court of Appeals of Kentucky, and upon which this action is based, are in conflict with the Constitution of the United States, and particularly with the 5th and 14th amendments thereof, because: (A) Said acts as so construed operate to deny to this defendant the equal protection of the law; (B) Said acts as so construed operate to deprive the defendant of its property, and to subject it to fine, without due process of law.

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AMERICAN SEEDING CO.,

By Att'ys.

Barren Circuit Court, July Term, July 11th, 1912. *

COM'W'LTH OF KY., Pl'ff,

vs.

AMERICAN SEEDING MACHINE Co., Def't.

Ord.

This day again came the parties by attorneys, and the jurors empaneled and sworn on a former day appeared and took their seats; and having heard the evidence in part, & not having time to further proceed with the trial of this case, the jurors are, under the admonition of the Court, excused until tomorrow morning at 8 1/2 o'clock

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Barren Circuit Court, July Term, July 12th, 1912.

COM'W'LTH OF KY., Pl'ff,

vs.

AMERICAN SEEDING MACHINE Co., Def't.

Ord.

This day again came the parties by attorneys, and the Jurors empaneled and sworn on a former day appeared and took their seats; and having heard the evidence and arguments of counsel, the case was submitted to the Jury, who retired to their room to consider of their verdict; and the Jury returned into Court the following verdict, towit:

"We the Jury find the defendant guilty and fix the fine at five hundred dollars. John W. Myers, one of the Jury."

It is therefore adjudged by the Court that the Commonwealth of Kentucky recover of the defendant, American Seeding Machine Company, the sum of Five Hundred Dollars, and the costs of the Commonwealth of Kentucky in this prosecution expended, and may have execution.

Barren Circuit Court, July Term, July 15th, 1912.

COM'W'LTH OF KY., Pl'ff,
vs.
AMERICAN SEEDING MACHINE Co., Def't.

Ord.

12 Came the defendant, by its attorney, and produced & filed its motion & grounds, and moved the Court to set aside the verdict of the Jury, and the Judgment rendered thereon, on a former day of the present term of this Court, and grant it a new trial of this cause, and this cause is submitted on said motion.

Barren Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
AMERICAN SEEDING MACHINE Co., Defendant.

Grounds for a New Trial.

The defendant, the American Seeding Machine Co., comes and moves the Court to set aside the verdict of the jury and the judgment of the Court thereon in this case, and grant it a new trial.

First. Because the Court erred at the conclusion of the defendant's evidence in refusing to give to the jury a peremptory instruction to find for it, "Defendant not guilty," as asked for by it in instructions No. 4 & 5 & 5½.

Second. Because the court erred in refusing at the close of all the testimony in the case to give to the jury said instructions No. 4 & 5 & 5½, asked for by defendant.

Third. Because the court erred in giving to the jury instructions No. 1 & 2, at the instance of the attorney for the Commonwealth over the objections of the defendant.

13 Fourth. Because the court refused to give to the jury instructions Nos. 6, 7, 8 and 9, asked for by the defendant, after the close of all the testimony.

Fifth. Because the court erred in admitting incompetent evidence before the jury for the Commonwealth over the objections of the defendant, and refused to permit competent evidence offered by the defendant to go to the jury.

Sixth. Because the only transaction of defendant during the year preceeding the filing of the petition and bringing of this action, as shown by the evidence, are transactions of inter-state commerce and that as applied to such transactions the Statute of Kentucky upon which the action is founded are void because in conflict with the commerce clause of the Constitution of the United States, towit: Section eight, of Article One thereof.

Seventh. Because section 3915 and 3941a of the Kentucky Statutes, as construed by the Court of Appeals of Kentucky, and upon

which this action is based, are in conflict with the constitution of the United States, and particularly with the fifth and fourteenth amendments thereof, because (a) said acts as so construed operate to deny this defendant of equal protection of the law, (b) said acts as construed operate to deprive this defendant of its property and subject it to a fine without due process of law.

Wherefore defendant prays that the verdict of the jury, and judgment of the Court, — set aside and new trial granted it.

PORTER & SANDIGE, &c., Att'ys.

14 Barren Circuit Court, July Term, July 16th, 1912.

COM'W'LTH OF KY., Pl'ff,

VS.

AMERICAN SEEDING MACHINE Co., Def't.

Ord.

The Court being advised, it is ordered that the motion heretofore entered herein on a former day of the present term of this court by the defendant, to set aside the verdict of the Jury & the Judgment rendered thereon in this case & grant it a new trial of this cause, be overruled, to which the defendant excepts.

And the defendant prayed an appeal to the Court of Appeals, which is granted according to law.

Barren Circuit Court, July Term, July 17th, 1912.

COM'W'LTH OF KY., Pl'ff,

VS.

AMERICAN SEEDING MACHINE Co., Def't.

Ord.

Came the defendant, by its attorneys, and produced and tendered herein its bill of exceptions, which was so endorsed by the Clerk of this Court, which said Bill of Exceptions was ordered to lie over for examination and approval by the Court.

15 Barren Circuit Court, July Term, July 20th, 1912.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,

VS.

THE AMERICAN SEEDING MACHINE Co., Defendant.

This day came the parties by Counsel and the bill of exceptions herein, heretofore tendered by defendant, being examined by the Court was approved by the Court and so endorsed and signed by the Judge thereof, and the same was ordered to be filed and made a part of the record in this case.

It is further ordered that Samuel Eskew, official stenographer of

this court, make a full and accurate transcript of the evidence taken in this case from his stenographic notes and a carbon copy thereof and file the same in the office of this court within 50 days from this date and, when filed, it is agreed by the parties to this action that the same shall be a part of the bill of exceptions herein and have the same effect for the purpose of an appeal as if filed in court on this day, and the same shall be transmitted by the clerk of this court with the record in this case to the clerk of the Court of Appeals, and that said transcript shall, by agreement of the parties, be used and considered by the Court of Appeals and to have the same effect upon the trial of the appeal in this action as if the same was filed in open court on this day.

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Barren Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

THE AMERICAN SEEDING MACHINE Co., Defendant.

Bill of Exceptions.

Be it remember- that on the trial of this case the evidence was taken by Samuel Eskew, official stenographer of this court, and his transcript of the evidence, certified to by him and approved by the Judge, is made a part of this bill of exceptions, the same as if copied in full herein. Upon the conclusion of the evidence for the plaintiff the defendant asked the Court to give instructions No. 4, 5 & 5½, which are as follows:

No. 4. The defendant moves the court to instruct the jury to find it, the defendant, not guilty, upon the ground that the only transaction of the defendant during the year preceeding the filing of the petition and the bringing of this action shown by the evidence are transactions of inter-state commerce and that as applied to such transactions the Statutes of Kentucky upon which the action is founded are void, because in conflict with the commerce clause of the constitution of the United States, viz: Section eight of Art. one thereof, and further upon the failure of proof.

No. 5. Because section 3915 & 3941a of the Kentucky Statutes, as construed by the Court of Appeals of Kentucky and upon which the action is based, are in conflict with the constitution of the United States, and particularly with the 5th and 14th amendment- thereof, because (a) said acts as so construed operate to deny this defendant of equal protection of the law; (b) said acts as so construed operate to deprive this defendant of its property and subject it to fine without due process of law.

Refused.

July 11, 1912.

17 No. 5½. The Court instructs the jury to find defendant not guilty.

Refused.

July 11, 1912.

The plaintiff objected to the giving of said instructions and the court sustained the objections of the plaintiff and refused to give said instructions to the jury, to which the defendant excepted, and said instructions *was* not given to the jury, to which the defendant excepted and, at the conclusion of all of the evidence the defendant again moved the court to give to the jury said instructions, 4-5-5½, heretofore copied in this bill of exceptions. The plaintiff objected to the giving of said instructions to the jury and the court sustained the objections of the plaintiff and refused to give said instructions to the jury, to which the defendant excepted and said instructions were not given to the jury, to which defendant excepted. After the evidence was all heard before the jury the court, on motion of attorney for the commonwealth, gave to the jury instructions No. 1 & 2; the defendant objected to the giving of said instructions before they were given, and the Court overruled its objections, to which ruling the Deft. excepted, and gave said instructions to the jury, to which the defendant excepted. Said instructions are as follows:

No. 1. "The Court instructs the jury that if they believe from the evidence to the exclusion of a reasonable doubt that the defendant, American Seeding Machine Company, before the filing of the petition herein, entered into or became a member of a pool, trust, combine, agreement, confederation, or understanding with the Hoosier Drill Company, Superior Drill Company, Kentucky Drill Company, Bickford & Hoffman Company, Buckeye Drill Company, or any of said companies, or any other company or corporation, for the

18 purpose of regulating, controlling, or fixing the price of fertilizers, grain drills, seeders, transplanters, disk harrows, potatoe diggers, potatoe planters or the repairs of same, manufactured or produced, or to be manufactured or produced by them, or any of them, and that the purpose and effect of said pool, trust, combine, agreement, confederation, or understanding, was to enhance the price of said fertilizers, grain drills, seeders, transplanters, disk harrows, potatoe diggers, or potatoe planters, or either or any of them, above their real value, and if the jury further believe from the evidence beyond a reasonable doubt that the defendant Company, in pursuance of and while a member of or a party to, or in any way interested in said pool, trust, combine, agreement, confederation, or understanding, in Barren County, and within one year before the filing of the petition herein, to-wit: within one year before November 16th, 1911, and under substantially the same market conditions that existed before the advance, if any, in price of said machinery or any of it, sold any fertilizer, grain drill, seeder, transplanter, disk harrow, potatoe digger, or potatoe planter, or transplanter, or any of them, or repair of same at more than their real value, then and in that event you should find the defendant guilty, and fix its punishment at a fine in any sum not less than Five Hundred Dollars, and not more than Five Thousand Dollars, in the discretion of the jury.

Given.

No. 2. Although the jury may believe from the evidence to the exclusion of a reasonable doubt that the defendant entered into, or became a member of such pool, trust, or combine, as set out in in-

struction No. 1, and that within twelve months prior to November 16th, 1911, the defendant, while a member of such pool, trust, or combine, sold fertilizers, grain drills, seeders, transplanters, potatoe diggers, or potatoe planters, mentioned in instruction No. 1, in Barren County; either itself, or through its agent at a greater price than said machine was sold at before the defendant become a member of such pool, trust or combine, as set out in Instruction No. 1, yet if they believe from the evidence that the enhancement in the price of said machinery was due solely to the increased cost of labor or material, if any, in producing said machinery, they should find the defendant not guilty.

Given.

The Court then gave to the jury the following instructions, towit:

No. 3. If the jury have a reasonable doubt of the defendant having been proven to be guilty you should find it not guilty.

Given.

July 12, 1912.

Defendant moved the Court to give to the jury instructions No. 6-7-8 & 9, and the plaintiff objected to the giving of said instructions and the court sustained the objections of the plaintiff and refused to give said instructions to the jury, to which the defendant excepted, and said instructions offered by defendant and refused by the Court are as follows:

No. 6. To convict the defendant the Commonwealth must show:

1st. A combination, confederation or conspiracy which had the purpose or the natural or probable result to raise prices of the goods manufactured or to be manufactured by the combination above their real value. That such combination secured a monopoly or a substantial monopoly of the goods of the character in question so as to enable it to compel its customers to pay more for its goods than the same are really worth, because they could not obtain from other sources the same kind of goods equally adapted to the purposes for which defendant's goods were adapted.

2nd. That under such conditions the defendant sold its goods of the character named in the petition or some of them at more than the real value thereof in Barren County, Ky., within one year prior to the bringing of this action.

It is not enough if it appears that a combination among a number of separate manufacturers of grain drills or any other line of agricultural implements was made, and that subsequently prices were raised, even tho' it appears that the combination secured practical monopoly of the particular line of goods, if it further appear that changed conditions increasing the cost of carrying on the business, of producing and marketing the goods, or changes in construction of the goods, have occurred justifying the increase in price.

Refused.

July 12th, 1912.

No. 7. If you find the only acts of defendant in disposing of its goods to customers in Barren County, Ky., within one year from the bringing of this action, consisted in sending into said County its traveling representative who had no authority to conclude a

sale, but who wrote up a contract which was signed by the customer and by said representative, and sent to the defendant company at Richmond, Ind., or Springfield, Ohio, for approval, upon which approval it first became a valid contract of sale pursuant to which the goods were shipped into Barren County to the purchaser, then there was no sale in Barren County and the defendant should be found not guilty in this action.

Refused.

July 12, 1912.

No. 8. A manufacturer, like any other person, is entitled to the value of the good will attached to his goods and if it appears his goods sell readily at better prices in competition with goods of the same kind of other manufacturers because — their reputation as honest, desirable and efficient goods, the manufacturer is entitled to such better prices as the value of the good will of his goods.

Refused.

July 12, 1912.

No. 9. A manufacturer is entitled to receive such prices for his goods as will secure him a fair average return on his capital invested in the business when conducted with reasonable economy and wisdom; and if you find the prices charged by defendant have not exceeded this standard, the defendant should be found not guilty. Where the business is risky, involving danger of a loss of the capital invested, the profit should be greater than in a business where there is not so great a danger of loss of capital.

Refused.

July 12, 1912.

The foregoing are the only instructions offered, given and refused by the Court. Then came the defendant and tendered this, his bill of exceptions, which being examined is approved by the Court and made a part of the record in this case without being spread on the order book.

SAM E. JONES,
Judge Barren Circuit Court.

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Barren Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,

VS.

THE AMERICAN SEEDING MACHINE COMPANY, Defendant.

Supersedeas Bond.

The defendant, The American Seeding Machine Company, having prayed an appeal from the Judgment of the Barren Circuit Court, rendered herein against it at its July Term, 1912, for a fine of Five Hundred Dollars, and costs,

Now, We covenant to and with the Plaintiff that, if said Judgment

be affirmed, we will pay said fine and costs, and all damages thereon, and the costs of the Appeal.

Witness our hands, this 16 day of July, 1912.

UNITED STATES FIDELITY &
GUARANTY CO.,

By THOS. DICKINSON, *Agent*.

Countersigned by—

ALLEN SANDIDGE,

Att'y in Fact.

Taken and subscribed to before me, this 16th day of July, 1912.

Attest:

J. H. BOHANNON,

Clerk Barren Circuit Court.

23

Barren Circuit Court.

THE COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

THE AMERICAN SEEDING MACHINE COMPANY, Defendant.

Schedule.

The Clerk of the Barren Circuit Court, for the purposes of an appeal in this action, is directed to copy the entire record in this case.

PORTER & SANDIDGE, *Att'ys.*

Notice of the filing of this schedule is waived, 16 July, 1912.

CLEON A. SUMMERS,

County Attorney.

Filed July 17th, 1912.

Attest:

J. H. BOHANNON, *C. B. C. C.*

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STATE OF KENTUCKY,

County of Barren, sct:

I, J. H. Bohannon, Clerk of the Barren Circuit Court, certify that the foregoing 22 pages contain a true and complete transcript of the entire record and proceedings, as per schedule filed, had in an action pending in the Barren Circuit Court, wherein The Commonwealth of Kentucky is Plaintiff and The American Seeding Machine Company is Defendant, as the same appear of record in my office.

Given under my hand, as Clerk of said Court, this 27th day of July, 1912.

J. H. BOHANNON,

Clerk Barren Circuit Court, Ky.

At the same time and with the foregoing transcript the appellant filed a transcript of evidence in words and figures following, to-wit:

Barren Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
VS.

THE AMERICAN SEEDING MACHINE COMPANY, Defendant.

Transcript of Evidence.

Be It Remembered, that on the trial of the above styled case, held at the Court House, in Glasgow, Barren County, Kentucky, on the 10th day of July, 1912, before the Hon. Samuel E. Jones, Judge, and a jury, the following evidence was introduced and heard:

Mr. CARROLL: I desire to read to the jury the Statement of the Corporation, which is, by agreement to have the same effect as if signed by the Secretary of State.

Mr. BOWMAN: That is correct.

The COURT: Very well, read it.

Mr. CARROLL (Reading): "Statement of Corporation, to be filed in the office of the Secretary of State before doing business in this state. Copy. To the Secretary of State, Frankfort, Ky., Date, Jan. 14, 1909. Sir: Notice is hereby given that the place of business for the *The American Seeding Machine Company* (Incorporated) a corporation of the State of Ohio, in Kentucky is #220 Tenth Street Louisville, Ky. c/o Impliment Transfer Co. and that Geo. D. Rogers of Louisville, Ky. is our agent thereat, upon whom process may be served in any suit that may be brought against our Company within the State of Kentucky. Done at Springfield, Ohio, this 14th day of January, 1909. Edward Buckwalter, President, B. J. Westcott, A Secretary. Attest. Seal."

Mr. CARROLL: To which statement is attached the following certificate: "Commonwealth of Kentucky, Office of the Secretary of State. Certificate. I C. F. Crecelius, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing writing has been carefully compared by me with the original record thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of Statement of Corporation of *The American Seeding-Machine Company* of Springfield, Ohio. In Witness Whereof, I have hereunto set my hand, and affixed my official seal. Done at Frankfort this 19th day of June, 1912. C. F. Crecelius, Secretary of State."

Mr. CARROLL: To the foregoing is attached the following Agreement. "Barren Circuit Court. Commonwealth of Kentucky, Vs. Agreement, American Seeding Co. It is agreed that the "Statement of Corporation", to which this statement is attached may be used as evidence in above styled case, with the same effect as if signed by the Secretary of State, and sent to the Clerk of Barren Circuit Court, in the manner directed by law. June 27, 1912. Humphrey & Humphrey, For Deft."

GEORGE D. ROGERS, having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows:

27 Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Rogers, have you been sworn?

A. Yes, sir.

Q. State your full name?

A. George D. Rogers.

Q. Where do you live?

A. Louisville.

Q. In what business are you?

A. I am traveling for the American Seeding Machine Company.

Q. What position do you hold with the American Seeding Machine Company?

A. Traveling salesman.

Q. Where are your head-quarters?

A. My head-quarters are at Richmond, Indiana.

Q. Are those your nearest head-quarters?

A. Yes, sir.

Q. Have you got any head-quarters in New Albany, Indiana.

A. No, sir.

Q. How long have your head-quarters been in Richmond, Indiana?

A. About three years.

Q. Have any office in Louisville?

A. Now?

Q. Did you at any time?

Q. We have had a transfer house there.

Q. When--Is it there now?

A. No, sir.

Q. When was it removed?

28 A. We turned our stock of obsolete machines and repairs over to the Factory about six weeks ago.

Q. You have no place of business in the City of Louisville?

A. No, sir.

Q. Have you any place of Business in the State of Kentucky?

A. No, sir.

Q. What position did you hold prior to six weeks ago, with the American Seeding Machine Company?

A. Traveling Salesman.

Q. Was that your official designation?

A. Yes, sir.

Q. Where were your head-quarters then?

A. At Louisville.

Q. Louisville, Kentucky?

A. You mean my head-quarters?

Q. Yes, sir.

A. Richmond, Indiana.

Q. Your place of business was in Louisville, Kentucky?

A. That is where I answered, yes, sir.

Q. What territory did you cover?

A. I have got a portion of Kentucky.

Q. What portion?

A. Well, I had about—Let me see, about—I think I had ninety counties, but I worked about two thirds of those; for one third of them were in the mountains and were unproductive, and I didn't work it except by mail.

Q. What machines did you represent?

A. The Hoosier, Empire and Kentucky.

Q. Where were those machines manufactured?

A. Richmond, Indiana.

29 Q. What other machines, I am speaking now of drills, are manufactured, and controlled by the American Seeding Machine Company, the defendant in this action?

A. The Superior, Farmer's Favorite, and the Buckeye.

Q. The Farmer's Favorite; where is it manufactured?

A. At Springfield, Ohio.

Q. If I understand you, the Empire, Hoosier and Kentucky are manufactured at Richmond, Indiana, and the Superior, Buckeye, and Farmer's Favorite, at Springfield, Ohio?

A. Yes, sir.

Q. All six of those machines are under the control of the American Seeding Machine Company, the defendant in this action?

A. As I understand it.

Q. Was Barren County one of your counties?

A. Yes, sir.

Q. How long have you been traveling and representing the American Seeding Machine Company in Barren County?

A. Seven or eight years.

Q. Did you sell in Barren County any drills, or machines of the American Seeding Machine Company, to agents or others, between the seventeenth of November, 1910, and the sixteenth of November, 1911, and if so, to whom did you sell them, as well as you can recollect?

A. As well as I can recollect, I sold to the Barren County Grocery and Hardware Company, in the year of 1911, and I sold—

Q. What time in 1911?

A. Now, I would have to go to my expense account to tell
30 the date.

Q. Was it prior to November 15th, 1911?

A. I couldn't say.

Q. Where is your expense account?

A. That expense account. I kept a file of my expense accounts in my desk at home.

Q. What machine did you sell to this company?

A. The Barren County Grocery & Hardware Company?

Q. Yes, sir?

A. Empire.

Q. You sold the Empire to the Barren County Grocery & Hardware Company?

A. Yes, sir.

Q. To whom did you sell the Hoosier?

A. Dickey & Company.

Q. When were any sales of the Hoosier made in this county?

A. Well sir; I believe I did make the second trip to sell Dickey & Company; but I don't think the deal was made at the same time that it was with the Barren County Grocery & Hardware Company?

Q. Was it in 1911?

A. Yes, sir; it was in 1911 when I made the contract.

Q. When were the goods delivered?

A. Now the goods were delivered, I think pretty early in the year.

Q. About what time in the year?

A. Probably the first of February.

Q. 1911?

A. 1912; that was for 1912.

31 Q. When did you deliver the goods for 1911?

Mr. BOWMAN: We object.

The COURT: Overruled the objection.

Mr. BOWMAN: We except.

A. Now they were probably—I didn't deliver any goods at all.

Q. What did you do?

A. I simply wrote up the contract for the American Seeding Machine Company at Richmond, Indiana to accept.

Q. When was the contract made with Dickey & Company?

A. For 1910?

Q. No, for 1911?

A. That is what I can't tell you.

Q. Have you any regular time for making contracts?

A. No, sir; only as I get around and cover my territory.

Q. When did you make any contract for 1911, for any delivery in Barren County, or about when?

A. I have an idea it was after November.

Q. November, what?

A. 1911.

Q. You don't make the contract for 1911, after November 1911, do you?

A. Very seldom.

Q. When did you make the contract for 1911, in Barren County?

Mr. BOWMAN: You mean the contract for the 1911 delivery.

32 Mr. CARROLL: The question speaks for itself, and I insist on the witness answering it.

The COURT: Answer the question if you can.

A. I say, Judge, we make the contract sometimes a year ahead. Now, no doubt I made a contract for the 1911 delivery. I might have got that in the Fall of 1910.

Q. What time in the Fall of 1910?

A. Possibly there was a few of them sold here.

Q. Are any of them sold here now?

A. Probably they are.

Q. Do you know of any being sold here, that is any of those makes, say the Oswego?

A. You mean in Barren County?

36 Q. Yes, sir; I am speaking of that, name one of those machines, outside of the Hoosier, Superior, Empire, Kentucky, and Buckeye, that have been sold in Barren county in the last three years?

A. Judge, I don't remember any.

Q. What machines are sold in Barren county, and have been sold for the last three years, give the names?

A. Empire, Hoosier, Farmer's Favorite—wait, let me see, Judge, I believe—No, there has been no Favorite.

Q. Did you sell any Superior?

A. Yes, sir; I said Superior, Hoosier, and Empire.

Q. They are the only ones that have been sold?

A. I don't remember any Farmer's Favorite.

Q. Do you remember any other machines that have been sold here in the last three years, except those three?

A. No, I don't, judge.

Q. Who controls those three machines that are sold in this county; what Company?

A. You mean who manufactures them?

Q. Yes, I mean who manufactures them, and controls them?

Mr. BOWMAN: We object to that because it has been answered.

A. Judge, let me correct that; there has been in the last three years; there has been some of the Fetcher Drills sold here.

Q. Who controls those three drills you spoke of, the Empire, Hoosier, and Superior?

A. The Barren County Grocery—They are manufactured by the American Seeding Machine Company.

37 Q. When you were selling for the Empire Drill Company, situated in New York, prior to 1903, you came in competition with the Superior, Hoosier, and Kentucky drills in your territory, didn't you?

A. Hoosier, Superior and Kentucky?

Q. Yes, sir.

A. Yes, sir.

Q. What was the selling price of the Empire drill prior to 1903, March, 1903?

A. The selling price to who.

Q. To the agent?

A. To the dealers?

Q. Yes, sir.

A. Judge, as well as I remember, \$64.50, for an eight disk drill, and an eight hoe drill.

Q. What was the Kentucky Drill selling for?

A. I can't answer that.

Q. Haven't you some idea?

A. Right along the line.

Q. Wasn't it selling for \$59.00 with the drill, seeder attachment, and fertilizer?

A. I couldn't say so.

Q. What is your best recollection, from competing with them in that time?

A. My best memory is, that from the dealers, it was impressed on me, that the price was about the same as our drills; very near it. I got that from the dealer, that they got from the farmer as much as we did.

Q. What was the Superior selling for?

A. They were selling along the line with us fellows; the
38 The Empire, for instance.

Q. When were you employed by the American Seeding Machine Company?

A. As I understand it it was formed in 1903. I don't remember exactly the months.

Q. When were you employed by it?

A. In 1903, if it was formed, then, which I understand it was.

Q. What composed the American Seeding Machine Company at the time of its formation from the knowledge you acquired from your business connections with it?

A. My understanding was that the Superior, Farmer's Favorite—

Mr. BOWMAN: We object, he has already been asked that.

The COURT: Overrule the objection.

Q. Go ahead?

A. And the Hoosier, and Empire, and Kentucky.

Q. Five companies?

A. Yes, sir.

Q. Those were the five acting and competing companies in Kentucky at that time?

A. We had some pretty strong competition then, as we have got now.

Q. I am speaking of that time?

A. At that time they were the most active, yes, sir.

Q. It was composed of the most active companies in the State?

A. I believe we had a better organization all of us. Single handed, we had a better—

39 Q. You all joined together in what time in 1903, March or May?

A. I couldn't answer the question.

Q. What machines did you take charge of?

A. Empire, Hoosier and Kentucky.

Q. Who took charge of the other drills, the other two, the Superior and Farmer's Favorite?

A. Listen, Judge, I am off on that. I didn't get to selling the Hoosier, Empire and Kentucky until about three years ago.

Q. Who managed the other two up to three years ago?

A. The other two—I was with the Empire division, and Mr. Holdeman was with the Kentucky, and Mr. Harris was with the

Hoosier, and Mr. Rice with the Superior, and I think—I can't call to mind the man who had the Farmer's Favorite.

Q. In making the contracts for the Empire, Hoosier and Kentucky, since you have been agent for those three machines, state whether or not you list those machines of the same size to the agent at the same price?

A. Give me that again, Judge.

Q. Read the question. (Stenographer read preceding question to witness.)

A. Yes, sir.

Q. That is true, and has been true since you have been agent, as to Barren County, isn't that correct?

A. For the American Seeding Machine Company?

Q. Read the question. (Stenographer read preceding question to witness.)

A. Since I have been traveling for the American Seeding Machine Company, and working Barren County; that is true.

But I was not making contracts right then, I would write them up, and they had to be accepted at Richmond Indiana, at our division.

Q. And you have been doing that three years?

A. Since I have had the three.

Q. I understood you to say that was about three years?

A. Yes, sir; I think something like that.

Q. What increases in the price of those machines have been made since 1903, when you recollect the first increase, when was it made?

A. The first increase was made, as I remember it, three years afterwards.

Q. When would that be?

A. 1905 or 1906.

Q. What was that increase?

A. My memory doesn't serve me; I can't tell you exactly; but it seems to me that it was about two dollars.

Q. Two dollars?

A. I think so.

Q. Was that increase on all of the machines?

A. It was on the grain drills.

Q. I am speaking about drills; was that increase on all of the grain drills?

A. You mean the three I had.

Q. Yes, sir?

A. Yes, sir.

Q. What character of drills did you handle; I mean in sizes?

A. I handled—As far as that is concerned, I had the authority to sell any size in my territory.

41 Q. Isn't there a drill known by the size of six by eight?

A. Yes, sir.

Q. And a drill eight by eight?

A. Yes, sir.

Q. And ten by eight?

A. Yes, sir.

Q. And a ten by seven?

A. Yes, sir.

Q. And a twelve by eight and a twelve by seven?

A. There are very few twelve by eight, or twelve by seven.

Q. Those are the kind of drills you sell in your section, that is in this section, what is it, a disk drill, right here?

A. In Barren county?

Q. And in your territory?

A. We have quite a good deal of trade here on the hoe drill.

Q. Do you sell a six by eight hoe drill?

A. Yes, sir; we do.

Q. And an eight by eight hoe drill?

A. Yes, sir.

Q. And the same size hoe drill as you do disk drill?

A. Yes, sir.

Q. And the increase in price in 1906 was about two dollars?

A. As well as I remember.

Q. Was that increase on the six by eight?

A. It was.

Q. On the eighty by eight?

42 A. It was.

Q. On the eight by ten?

A. It applied to the line.

Q. Irrespective of the size?

A. Yes, sir.

Q. Which is the larger an eight by eight or a six by eight?

A. An eight by eight.

Q. How much larger is an eight by eight than a six by eight?

A. Sixteen inches.

Q. I am sure the gentlemen of the jury do not——

A. It is owing to how you say larger. Do you mean how much more land it sows?

Q. Are there more parts to an eight by eight than there — to a six by eight drill?

A. There are some more parts to the eight by eight.

Q. What parts are they?

A. There is two disks, and two furrow opener attachments, and of course it takes the necessary parts to put those attachments on the drill. Necessarily there has got to be more parts, some more parts to make the drill wider.

Q. How much larger is a ten by eight than a six by eight?

Mr. BOWMAN: Will you allow me to make a statement?

Mr. CARROLL: No, sir; I will not, I object to you making a statement now.

Q. Please explain the working of a drill?

A. In the field?

Q. Yes, sir?

43 A. Well, in working a drill, you hitch two horses to it.

Q. We assume that to be true?

A. And you put the fertilizer in the fertilizer division, and the

wheat in the wheat division; I am speaking of an Empire drill now gentlemen, and you put the seed in the seeder attachment, which is on the front of the drill, and then of course, you put the horses to it, and put a man on there to drive, either on the seat or on the drill, and in operating the drill, it is simple, you have to have different speeds to get different quantities, of both the fertilizer, grain and seed. We have our different ways of getting at that different speed.

Q. Does this grain and fertilizer get to the ground through tubes, or openings?

A. It gets to the ground through conductors.

Q. How many conductors has a six by eight?

A. It necessarily would only have six.

Q. How many conductors has an eight by eight?

A. Eight.

Q. How many has a ten by ten?

A. Ten.

Q. How many has a ten by seven?

A. Ten also.

Q. And a twelve by eight?

A. Has twelve.

Q. What does the eight mean, when you say six by eight?

A. That eight stands for eight inches apart.

Q. A disk drill six by eight, has six conductors eight inches apart?

44 A. Yes, sir.

Q. And so on with each of the other drills?

A. Yes, sir.

Q. And an eight by eight drill requires more conductors than, and more material and machinery than a six by eight?

A. It requires some more, yes, sir.

Q. And a ten by eight, of course, some more?

A. Yes, sir.

Q. And a twelve by eight more?

A. Yes, sir.

Q. In fact, there is more machinery in proportion to the size of the drill, and the increase was made irrespective of the size in all of those machines?

A. Yes, sir.

Q. A sixteen by eight, you say was increased two dollars in 1906?

A. Yes, sir.

Q. And the eight by eight was increased two dollars?

A. Yes, sir.

Q. The ten by eight was increased two dollars?

A. If they made the ten and eleven sizes, I may be a little off as to what the prices was, and as to what the raise in the price was, because we sold very few of them down here. I don't remember; I couldn't say there was a rise of two dollars. If I am right, it applied to the full line.

Q. It applied to all of those from the six by eight to the ten by eight?

A. Yes, sir.

45 Q. And the same raise applied to the Springfield manufacture, that is the Buckeye, and the Farmer's Favorite?

A. I couldn't say, because I didn't sell those.

Q. Weren't you in communication with the American Seeding Machine Company as agent, and meeting the other agents of the American Seeding Machine Company who sold the Springfield, the Superior and others?

A. Yes, sir; I was in communication with our Division at Richmond, Indiana.

Q. You say now, that you don't know what they listed their machines to the agents for?

A. I will say that I wouldn't be positive. I understand from the talks and meeting occasionally, that they made their prices the same as ours.

Q. Who has been the agent for the last three years for the American Seeding Machine Company, representing the Springfield, manufacture the Superior and the Buckeye?

A. For the last three years?

Q. Yes, sir; and the Farmer's favorite?

A. That has been a man, Mr. W. A. Neilson.

Q. When was the next increase made?

A. And a Mr. North has been with the Springfield division, also.

Q. Read the question. (Stenographer read preceding question to witness.)

A. In 1910.

Q. What was that increase?

A. About two dollars, I think.

Q. That was for what year?

A. That naturally applied on the 1911 machines.

46 Q. That increase applied to all of the machines, the six by eight, eight by eight, and ten by eight?

A. Yes, sir; as I have stated it.

Q. Applied to the machines in Barren county?

A. Yes, sir.

Q. That same character of increase applied to the Springfield, Buckeye, Farmer's favorite?

A. I presume it did; I don't know positively.

Q. You have had conversations and understanding with the agents of the American Seeding Machine Company, who represented those three last machines?

A. Understandings?

Q. Talks?

A. Yes, sir; but we never discussed our business; or our prices or terms and so forth, because we were competitors of each other.

Q. Competitors of each other?

A. Necessarily so.

Q. Explain that, Mr. Rogers, you were representing the American Seeding Machine Company?

A. Yes, sir.

Q. The agent of the Springfield, Buckeye, and Farmer's Favorite represented the American Seeding Machine Company; how were

you competitors; it was true that he was representing the American Seeding Machine Company?

A. Yes, sir; and for the Springfield, Ohio Division.

Q. Explain what you mean by being competitors?

A. Judge, if you are selling an article in the field, and another man is traveling in the same territory, and you have to
47 get your money that way, for instance, you represent the firm at Richmond, Indiana, and he got his money from Springfield, Ohio, you would naturally suppose they were competitors, which we were, for the simple reason, to explain that. At all times, and at any time, if a man so desired, and expressed his desire, he had the liberty to handle one division over the other, and you would go in and make a contract with him, you see.

Q. That is, you were competing to get more business for your division of the American Seeding Machine Company than the gentlemen who represented the other division?

A. Certainly; we traveling men were trying to beat each other to it.

Q. But it all went to the American Seeding Machine Company?

A. What I got went to the Richmond, Indiana division, and what he got, went to the Springfield Division.

Q. Which is the best machine in your opinion, Mr. Rogers?

A. You know what traveling men do, they say what they have got is the best.

Q. You are not a traveling man now, just as a witness, which is the best machine?

A. The best machine- in my opinion are the ones—One is about as good as the other.

Q. There is not any special difference?

A. The workmanship, and the quality of work done is about the same.

Q. Do you know anything about the cost of those machines?

A. The cost of construction?

Q. Yes, sir?

48 A. I do not.

Q. You have no knowledge on that subject?

A. I have not.

Q. They keep that from you?

A. I never heard it.

Q. You are given certain list prices by which you make the contracts with the agents and that is all you know?

A. Yes, sir.

Q. There were printed lists made out, which applied to all of the machines, and a blank space left for you to insert the name of the machine which the agent contracted for, is that correct?

A. That printed price list was for all except the seeder, it was not in the contract, or document I wrote up you see, for the acceptance at Richmond, Indiana; the price was not mentioned there, they wrote the price in that contract.

Q. Who wrote the prices?

A. I had to insert the price, of course, I would have to consult my price list.

Q. You inserted in each contract the same price?

A. Yes, sir; The prices of the different times.

Q. The price sheet given to you was separate from the contract?

A. Yes, sir.

Q. In filling it up you filled it up and put in the price on the price list furnished to you?

A. Yes, sir.

49 Q. That price list was identically the same for each machine, for the same size?

A. Those I handled, and so far as I know, for the Springfield Division. For the same classes of machines.

Q. Have you the 1911 price list with you?

A. 1911, I don't believe I have.

Cross-examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. You said Mr. Rogers your business was to write up the contract that went to the office at Richmond, for approval?

A. Yes, sir.

Q. Were these contracts written in duplicate, were there two of them?

A. Yes, sir.

Q. Did you send them both to the Company at Richmond, Indiana?

A. Yes, sir.

Q. So you made no contract with the purchaser of the goods yourself, at all?

A. No, sir.

Q. The contract was made, subject, as shown on it, to the approval of the Company at Richmond, Indiana?

A. Yes, sir; that was right across the face of the contract.

Q. What you did was simply to solicit orders for the goods?

A. Yes, sir.

50 Q. And the persons to whom you sold them were called dealers?

A. Yes, sir.

Q. They buy them outright for themselves?

A. Yes, sir.

Q. And they become their goods?

A. Yes, sir.

Q. They don't represent the American Seeding Machine Company, and sell those goods to the farmers?

A. They only represent themselves.

Q. The competition you spoke of between the different lines of goods is the competition in all other respects except the price?

A. Yes, sir.

Q. Each hustles for the line of goods he represents?

A. Yes, sir.

Q. Prior to the formation of the American Seeding Machine Company you referred to, you were traveling in this territory for the Empire?

A. Yes, sir.

Q. What territory were you covering for the Empire?

A. I was covering partly the same territory. The lines have been changed some. I have got a great deal of territory.

Q. Did you not cover more territory then than you do now?

A. Yes, sir.

Q. How much more?

A. I have been all over the State for them; and by the way I made a few trips in Tennessee for the Old Empire Drill Company.

Q. Well, what portion of the time did you put in in traveling all over the State?

51 A. Well now, that was supposed to be the year around; I was employed the year around to work the trade.

Mr. CARROLL: There is one question I omitted to ask.

Mr. BOWMAN: Ask it now.

Further direct examination.

By Mr. CARROLL, of counsel for the plaintiff:

Q. Who made the settlements with those agents, Mr. Rogers?

A. We make the adjustment with those agents, and that is subject also to approval of the Division at Richmond, Indiana.

Q. You did make those adjustments?

A. I did.

Q. How often?

A. Usually once a year.

Q. To illustrate, for the year, the contract entered into for the year 1911, was made in the Fall of 1910, and then in the Fall of 1911, you would come to Barren County, and there make the settlements of their accounts of the various agents, with whom you had contracts for the year 1911, is that correct?

A. I would come here, Judge, maybe anywhere between the first of November, and sometimes, not until March, to make that adjustment with the agents.

Q. You and the agent would settle the accounts, and then that settlement would be forwarded to Richmond, Indiana?

A. Yes, sir.

52 Q. And there it — passed upon by the Company?

A. Yes, sir; we would agree upon the adjustment between ourselves, and it would be mutually understood that it — to be accepted at Richmond Division.

Q. Did the agent sometimes execute to you notes for their purchases?

A. Yes, sir.

Q. Did they pay those notes to you at times?

A. The purchasers?

Q. No, the agents?

A. Once in a while they would pay them, or turn them over to me to turn over to the Company.

Q. And they would make cash payments to you?

A. Yes, sir.

Q. When cash payments were made they were made to you?

A. Yes, sir; to turn into the Company.

Q. That business was conducted that way during the time you have been acting for the American Seeding Machine Company?

A. Yes, sir.

Q. In Barren county, the same as in other counties?

A. Yes, sir.

Further cross-examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. Counsel kept speaking to you about the agents, whom do you mean by the agents?

A. The agents—They were not agents, unless they were termed agents, after they accepted the contract of the American
53 Seeding Machine Company.

Q. What class of people do you refer to?

A. The dealers.

Q. Are they the same class you refer to as the purchasers of the goods, the dealers?

A. Yes, sir.

Q. Has the Company any other business with them except to sell them goods and collect the money?

A. Any other business with them?

Q. Yes; except to solicit trade and collect the money for it?

A. I don't know that they have got any with them.

Q. Then these dealers are not agents of this company at all?

Mr. CARROLL: I object to the witness determining a question of law.

The COURT: I sustain the objection to that question.

Q. These witnesses do not act on or for the Company in any matter?

A. No, sir.

Q. Everything they do is done on their own behalf?

A. Yes, sir; everything they do is done on their own behalf.

Q. You spoke of getting notes; to whose order were those notes made when you would make the settlements; who were they made to; to whose order?

A. Sometimes they would be made to the order of the agent or dealer; that was very often the case.

Q. And you would settle with the dealer?

54 A. Yes, sir.

Q. And sometimes you would take notes in the settlement; would you take the dealer's notes, or some note he has got?

A. I would take the farmers' notes, if they endorsed them.

Q. Sometimes he has the farmer's note?

A. Yes, sir.

Q. And would turn it over to the American Seeding Machine Company?

A. Yes, sir.

Q. To whose order would he take that?

A. Payable to the American Seeding Machine Company.

Q. Does he sometimes give his own note?

A. Sometimes.

Q. To whose order did he make that?

A. To the American Seeding Machine Company.

Q. You would take that stuff all and send it into the Home office?

A. Yes, sir.

Q. If they approved it it was a good settlement?

A. Yes, sir.

Q. If they don't approve it it is not any settlement?

A. Would have to make it over.

Q. If it was not correct?

A. Yes, sir.

Q. You generally tri-d to make that settlement at the same time that you arranged for the sale of some other goods?

A. Yes, sir.

55 Q. You started to say, when counsel interrupted you, about the lines being changed, that were made before the formation of the Seeding Machine Company, that you traveled the entire state of Kentucky, and sometimes Tennessee?

A. Yes, sir; I have made a few trips there.

Q. Did they have any traveler in the State of Kentucky besides you, the Empire?

A. None that were called regular travelers.

Q. They had no regular traveling men in the State except you?

A. No, sir.

Q. You were the only regular traveling man in the State?

A. I was supposed to be the regular man; a very few times they would get in some of their other men in the territory w-ere there was a great many drills sold; maybe they would call in an extra man or two to canvass for a month or so but I was the only regular man.

Q. Was your regular territory Kentucky?

A. Yes, sir.

Q. Or did you work certain parts of Kentucky more than you worked the whole state?

A. I don't know that I did.

Q. So that the Empire aimed to worke the whole state?

A. Yes, sir.

Q. Now they work what counties?

A. I will have to think about that.

Q. What portion of the State; half of the State of Kentucky now worked, approximately?

A. It is properly called the central part of Kentucky and Eastern.

56 Q. Is it two thirds or half of the State?

A. About two thirds, I suppose it covers ninety counties.

As I said awhile ago, there is about twenty or thirty of those counties in the mountains that I don't work, and never did work.

Q. You said you had less territory in Kentucky now, than you had with the Empire?

A. Yes, sir.

Q. How much less?

A. Half.

Q. A half less?

A. Yes, sir.

Q. Is there anybody working that other half?

A. That is, more or less, counting in the counties that are unproductive.

Q. Is there anybody working the other territory?

A. Yes, sir.

Q. Do they for the Seeding Machine Company?

A. Yes, sir.

Q. Does he confine himself to that territory?

A. To his territorial lines.

Q. Do you two men, are you the only ones that work for the American Seeding Machine Company, the territory you used to work for the Empire?

A. You are speaking of the American Seeding Machine Company of Richmond, Indiana; you don't mean for the other Division.

Q. For that division, you two men work for the American Seeding Machine Company, the same territory that you worked for the Empire?

57 A. That is right.

Q. And you represent in that territory the Hoosier division?

A. Yes, sir.

Q. Three lines?

A. The Hoosier, Empire and Kentucky, yes, sir.

Q. How many men—Or did the Hoosier have a man in that same territory?

A. Yes, sir.

Q. How many men do you remember, or what territory he had?

A. That is, before, if I understand you.

Q. Yes, sir; before?

A. They had, as I stated awhile ago, they had Clem Holderman.

Q. Did he work the whole State?

A. Yes, sir; as I understand it.

Q. Whom did the Kentucky have?

A. It had at times; I can't call the names of the boys who worked for them.

Q. Did they have anybody that worked regularly in the State of Kentucky; confined himself to the State of Kentucky?

A. I don't think they did.

Q. They just had occasional workers to come in the State and go out, and they didn't work the state regularly?

A. I seen them; they would send them clean to Dakota, and to Minnesota, and then they would work Kentucky part of the time.

Q. So that there was no man working the State of Kentucky for the Kentucky Drill, in the way it is now worked for the
58 Hoosier Division, before the combination?

A. No, sir; that is right.

Q. They simply had occasional visitors to come in and hit the high places and go out?

A. That is the way I remember it.

Q. What is your salary compared to what it was when you worked for the Empire?

A. There is a pretty good increase.

Q. How much increase?

A. I would say about fifty per cent.

Q. Do you know anything about the other men?

A. I believe the other man beat me a little. I think he got pretty near the same.

Q. Do they have other men assisting you on those lines in the State occasionally or at any time?

A. No, sir.

Q. You just attend to it all?

A. Yes, sir.

Q. You have said that before the Seeding Machine Company was formed in 1903—there are other drills besides the ones they took over?

A. Yes, sir; about the same proportion there is now; or in fact there is more now.

Q. How many are there now?

A. Doing business in Kentucky.

Q. I want those who are trying to do business, and those who are doing business?

A. Mr. Bowman, I couldn't call to mind my competitors.

Q. Take the American Drill Company of Marion, Indiana?

59 A. They never did any business before the formation of the American Seeding Machine Company.

Q. Have they since?

A. Yes, sir.

Q. They tried to do business before?

A. I didn't know of it.

Q. Take the Peoria Drill Company of Peoria, Illinois?

A. They did a little business in Anderson county; that is the first place I heard of them.

Q. They were trying to do business generally in the state?

A. They didn't seem to try very hard.

Q. Do you know to what extent they circulated the trade; have you seen their catalogues?

A. I think I have seen them; I think they send them out.

Q. What about the National Drill, or Cambridge?

A. I never saw a two horse machine of theirs.

Q. How about Rude Brothers of Liberty, Indiana; do they do any business in this vicinity, or did they, prior to the combination?

A. I think they were doing some.

Q. Take the Wayne works of Richmond, Indiana?

A. They were doing about as much then as they are now, if I am not mistaken; I know they are.

Q. Are they offering to do business in the territory you travel?

A. Yes, sir.

Q. How about the Thomas Manufacturing Company, of Springfield, Ohio?

A. They are doing more business to-day than they did then.

Q. In the territory you travel?

60 A. Yes, sir.

Q. They are offering to do more, if they can get it?

A. Yes, sir; they have got enough men. That is, they are sold through the jobber in Louisville.

Q. Through a jobber business house?

A. Yes, sir.

Q. How about the Fetzer Company, of Springfield, Illinois?

A. They have got more trade; in fact, I know they have got more trade than they did have prior to the formation.

Q. Did they have some trade prior to the formation?

A. Yes, sir.

Q. Are they competitors of yours now?

A. Yes, sir.

Q. How about the Dowagiac?

A. They have got about the same in Kentucky they had in 1902—3-4 and along there.

Q. Are they competitors of yours?

A. Yes, sir.

Q. How about the Monitor, of Minneapolis?

A. I know nothing about them.

Q. How about the Owatonna Manufacturing Company?

A. They have never been down here; I never come in contact with them. But they are advertising just the same.

Q. Is that also the case with the Monitor?

A. Yes, sir.

Q. How about the Dempster Mill Manufacturing Company?

A. I don't know that they have been in here. They are advertising in here; but they don't send anybody.

61 Q. The King Drill Manufacturing Company, of Kansas City?

A. They make a five disk drill; about the same number is sold now.

Q. How about the Champion Drill Company of Avon, New York?

A. I don't know them.

Q. The Crown Manufacturing Company?

A. I don't know it.

Q. The Ontario Drill Company?

A. I don't know it.

Q. The Hench & Dromgold Company?

A. I don't know it.

Q. They have had no traveling men?

A. No sir.

Q. The Ranchen Gungo?

A. They make a low down drill.

Q. Yes, sir?

A. There might have been a few of them sold; I believe there was.

Q. How about the Splangly?

A. I don't know then.

Q. The Van Brunt?

A. I never seen a Van Brunt drill.

Q. Have you seen the advertising?

A. Yes, sir; I have seen the advertising all right of all of them.

Q. The- circulate catalogues?

A. Yes, sir; and write letters to the dealers.

Q. How about the J. S. Rowels Company?

A. I knew one of them.

62 Q. How about the LaCross Plow Company?

A. No, sir; I don't know them.

Q. The Beaver Dam Manufacturing Company?

A. No, sir; I don't know them.

Q. The Tennessee Valley Manufacturing Company?

A. What is the name of the drill?

Q. This list don't give the name of the drill.

A. I don't know nothing about it.

Q. The Owega Drill?

A. They have got some I think, and had some before.

Q. In your territory?

A. Yes, sir; they never done a very big business.

Q. Have the Fetzer drills been sold in Barren county?

A. Yes, sir.

Q. Within what period?

A. I think—you mean to the farmer or dealer?

Q. I mean to the dealer.

A. Seven or eight years ago; you are speaking of Barren county?

Q. Yes, sir.

A. They have been sold, as I remember; I wouldn't be certain about the time; but they were sold here to the dealer along a few years ago; five or six years ago; I couldn't tell. They have been sold to the dealer, I think—I mean to the farmers, I think in the last year, or two years maybe, something like that.

(Court here adjourned until one o'clock P. M. of the same day, and met at said time pursuant to said adjournment, and the cross examination was resumed.)

63 Q. You were speaking of other drills that were represented by advertisement and otherwise in your territory, in Kentucky, I will ask you what that bunch of books is?

A. That is their catalogues of the different drill companies.

Q. Where did you get those catalogues?

A. I picked them up in my travels over the State.

Q. In Kentucky?

A. Yes, sir.

Q. In your territory in Kentucky?

A. Yes, sir.

Mr. BOWMAN: I want to offer those catalogues in evidence, and let them be considered as read.

Mr. CARROLL: Very well.

The COURT: Let them be considered as in evidence.

(The books referred to were catalogues of the following companies, to-wit: The Wm. Fetzer Company, Springfield, Ill. The Wayne Works, Richmond, Indiana. Rude Bros. Manufacturing Co., Liberty Indiana. Thomas Manufacturing Co., Springfield, Ohio. Dowagiac Drill Company, Dowagiac, Michigan. Owatonna Mfg. Co. Owatonna, Minn. Dempster Mill Mfg. Co., Beatrice, Nebraska. The Champion Drill Company, Avon, New York. The American Drill Co., Marion, Indiana. The J. S. Rowell Mfg. Co. Beaver Dam, Wis. Ontario Drill Co. East Rochester, New York, and the Hench & Dromgold Co., York, Penn. By agreement of counsel these catalogues were not to be copied in this record.)

Q. You spoke this morning about making settlements with the dealers of their accounts, did you make all settlements, or did you make the settlements only of the small ones?

A. We made nearly all of our settlements; when I say we I mean the American Seeding Machine Company; we got cash most of the time.

Q. That didn't go through your hands at all?

A. No, sir.

Q. Frequently the customer made the whole settlement by mail with the Company?

A. Yes, sir.

Q. So that your action for the company in the matter of settling the accounts was not regular?

A. No, sir.

Q. You spoke this morning——

A. That is now, it is not expected that I make any regular trip to make any settlement.

Q. You attended to any that needed attention?

A. Yes, sir.

Q. You spoke about the raise of the prices of these drills in 1906, I think?

A. It was in 1904, '05 or '06.

Q. You didn't give the exact year; do you know what the raise was?

A. As well as I remember it was two dollars.

Q. Wasn't it one dollar

A. It might have been two dollars, or one dollar; but as near as I remember, it was two dollars.

Q. You don't remember what it was?

A. No, sir.

Q. You said there was in 1908 or 1910 a raise of two dollars?

A. Two dollars, I think it was.

Q. It might have been three dollars?

A. Yes, sir; it might have been.

Q. That is your memory?

A. My memory don't serve me correctly.

Q. You are giving something of a guess, when you give those exact figures?

A. Only that; yes, sir.

Q. What changes have there been in the construction of these machines, between 1911; that is now and as they were made prior to the combination?

A. A detailed explanation would consume a great deal of time, but there has been a number of changes, improvements. Do you want me to go into details?

Q. Take the Empire drill for example, is it the same drill that was made in 1903?

A. The Empire Junior, is the outcome of the old Empire.

Q. How extensively has that been changed?

66 A. It has been changed until the two drills hardly look like the same.

Q. Did that result in an increase or decrease in the cost of construction?

A. Undoubtedly an increase in the cost.

Q. Did that involve an increase or decrease in the efficiency of the drill?

A. It certainly has increased the efficiency of the drill.

Q. Is that so with the other lines of articles, besides the Empire?

A. Yes, sir. Of course, I am better acquainted with that drill, because I sold it before 1903.

Q. How is it with the Kentucky and the Hoosier, as far as you know.

A. Well they have improved that right along.

Q. Has it been going on since the combination was formed?

A. Yes, sir.

Q. How extensively?

A. The most vital points I think is the grain seeding attachment, and the furrow opener. They have got a furrow opener, which is very much better to-day than it was in 1903, on all three drills. And they have changed the feed. They have improved on the feed, doubled it in capacity, one way and another. In my opinion one of the best improvements was in the fertilizer feed, and the changes have been made on all three of the drills; and the change of the fertilizer and seeder attachments.

Q. What would you say as to whether the improvements have increased the value of the machines, as much as the increase in price has been made?

67 A. Of course, if I was going to use a drill, I have been selling it, you know, I would rather have the drills as they are to-day; well ten dollars more on the drill, on account of its improvements, over those days.

Q. Do you know anything about the changes in the cost of the materials, and the labor, and things of that kind, whether there has been any in the last ten years?

A. Certainly have been some on everything; everything certainly costs more; everything I handle to live on.

Q. How about your expenses as a traveling representative of the Seeding Machine Company?

A. They have increased?

Q. They are larger than they were?

A. Yes, sir.

Q. You spoke of having a raise of fifty per cent in your salary, do you have any better margin after paying your expenses, than you did in 1903?

A. Very little.

Q. The increase in salary is practically met by the increase in the cost of living?

A. Yes, sir; I am sure it is.

Q. How about the scale of your living, is there any difference?

A. No, sir; no difference in the scale of my living.

Redirect examination, #1.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Rogers, you say there has been an increase in the cost of your expenses, in the last few years, over what they were
68 in 1903, or before the combination?

A. Yes, sir.

Q. There has been an increase in the cost or price of farm produce?

A. There certainly has.

Q. A good increase?

A. Pretty nice.

Q. And also an increase in the price and cost of farming implements, hasn't there?

A. I have not had an opportunity to see the other men's list; I can only speak for our own.

Q. There has been an increase in the cost of yours?

A. Yes, sir.

Q. Increase in the cost of wagons, hasn't there?

A. Yes, sir.

Q. And an increase in the cost of plows, the selling price of plows, hasn't there?

A. I don't know so much about that.

Q. From your general information, don't you know it is true?

A. Yes, sir; everything has gone up.

Q. All manufactured articles, that is your general information?

A. Yes, sir; that is my general information.

Q. All manufactured articles used, has gone up?

A. That is my general information; yes, sir.

Q. Isn't it a fact that the increased price of manufactured articles takes away all of the profits on the increased price of the farmer's produce?

69 Mr. BOWMAN: We object to that question.

Q. I will ask you this question, hasn't the increased price of manu-

factured articles, increased in direct proportion to the increase in the prices of the farmers' produce?

Mr. BOWMAN: We object to that.

The COURT: Overrule the objection.

Mr. BOWMAN: Give us an exception.

A. I don't know as I understand that.

Q. Read the question? (Stenographer read the preceding question to witness.)

A. I think it has.

Q. Every time the farmers' produce went up a little the manufactured articles, that he used went up a little, isn't that true?

Mr. BOWMAN: We object.

The COURT: Overrule the objection.

Mr. BOWMAN: We except.

A. Well, you understand, I am pretty thick headed, I don't understand sometimes.

Q. I have never found you so; isn't it a fact that it did?

A. I don't know that they went up every time that the farmers' produce went up.

Q. As a general proposition?

A. I hear a good deal of talk along those lines.

Q. Isn't it true from your general knowledge and information, that the number of manufacturers, of the various articles used by the farmers have increased in that way?

70 A. State that again, please.

Q. Read the question. (Stenographer read preceding question to witness.)

A. Yes, sir; they have.

Q. Isn't it further true that the number of farmers have been decreasing, by reason of so many going to the Cities, and the City population increasing at the expense of the country?

A. I don't know.

Q. From your general information?

A. I often hear it talked, and a great many have the opinion that it has.

Q. It has?

A. Yes, sir.

Q. From your general knowledge and information, if the number of farmers have decreased, and the number of manufacturers have increased, why, as an expert, having knowledge of machinery, and general information, why is it that the increase in the price of the manufactured article has increased, there being less farmers?

Mr. BOWMAN: We object to that.

The COURT: Sustain the objection.

Mr. CARROLL: We except and make the following avowal. (Not in hearing of jury) if the witness was permitted to answer he would state that he has not given sufficient study to the question to give a definite answer.

Q. What is your salary now?

71 A. Is it necessary for me to state in dollars and cents.

Q. You said it was increased fifty per cent; I want to get an idea of what you are being paid, and I asked you the question and I want you to answer it?

A. Fifteen Hundred Dollars per year.

Q. One Hundred and twenty five dollars per month?

A. Yes, sir.

Q. How much prior to this combination?

A. One Thousand Dollars.

Q. You were doing for one thousand dollars, for the Empire Drill Company, doing the work you are now doing for the Empire, Hoosier and Kentucky for Fifteen Hundred?

A. Yes, sir.

Q. Do you ever have any old machines left over, the agents what becomes of them?

Mr. BOWMAN: I object to the use, by counsel of the term agent, as there isn't any such description in the evidence.

The COURT: Overrule the objection, as the witness used the term.

A. That is a common term; but they are dealers. We have shipped goods on direct sale; direct bill; they were not our agents; they were dealers that handle the stuff.

Q. When they have any left, what becomes of it?

A. That, I don't know—They sell it.

Q. They hold it over, do you take it back, or charge it up and arrange for the next year, or how?

A. We don't carry it on our own account.

Q. You allow them credit for it?

72 A. We take their notes payable in a year's time, to bear interest at six per centum per annum; that is done simply as an accomodation.

Q. Suppose some is left over, that is, what you do with what is left over?

A. They are their goods, if they feel like they don't want to pay for them, we accept their note payable in one year from date. No, we take their note without interest, that is the way it is done.

Q. At what price?

A. At the price that bill calls for.

Q. At the list price?

A. List price.

Q. What was the list price in 1910, of the six by eight Superior Drill?

A. I don't know.

Q. For 1911?

A. I mean, of course, as you say—I stated before dinner that—

Q. I mean the Hoosier and Empire, what was the list price of an eight by eight drill?

A. For 1910?

Q. For the 1911 trade, the contract made in 1910?

A. \$67.50.

Q. \$67.50?

A. Yes, sir; that is disk drill with seeder and fertilizer.

Q. Isn't it a fact that they were selling at Sixty Dollars prior to 1913, with the seeding attachment, prior to the combination, wasn't you selling them for Sixty Dollars, the same as is now sold for

73 \$67.50 or was in 1911?

A. I don't remember.

Q. What is your best recollection.

A. My best recollection is that it was \$64.50.

Q. Did you have any occasion to examine any of those bills in the last few days, or did you get them from Mr. Holderman or the Firm?

A. Yes, sir.

Q. What bills were they?

A. For 1902.

Q. What drill?

A. Empire.

Q. What does that invoice show they sold for to the dealers?

A. The invoice called for \$64.50, for an eight disk drill.

Q. Where is that invoice?

A. I haven't got it myself.

Q. What did you do with it.

A. I give it to Mr. Porter & Sandidge.

Q. Will you let us have those invoices, if you please?

Mr. BOWMAN: Here it is. (Hands paper to Mr. Carroll.)

Q. What drill is this, August 14th, 1902, what invoice is that?

A. August 14th, 1902, six or I mean ten by eight Superior \$65.50. That is a six disk; and that is an eight disk. (Witness indicating on paper.)

Q. C. S. what does that mean?

74 A. That means a complete machine.

Q. Mr. Rogers, I will ask you to state whether or not the peices of iron and steel were higher or lower in 1909 and 1910 than they were in 1901 and 1902?

A. I couldn't answer that question because I didn't read the papers.

Q. Do you know what the prices are?

A. My opinion was that everything on earth had gone up; and that it had too.

Q. Have you had any experience with the cost of those machines?

A. The cost of manufacturing them?

Q. Yes, sir.

A. No, sir.

Q. You said that they had increased in cost on account of the improvements, I believe, didn't you make a statement of that kind in a question by Mr. Bowman?

A. How is that?

Q. Read the question. (Stenographer read preceding question to witness.)

A. Yes, sir.

Q. How much did it increase the cost?

A. How much did the improvements increase the cost?

Q. Yes?

A. Well, as I said awhile ago, I would rather give ten dollars more for the drill now than the one of 1902 as far as efficiency of the drill is concerned.

Q. I will ask the stenographer to read the question and
75 submit it to the Court.

The COURT: Read the question, Mr. Stenographer. (Stenographer read the question to witness.)

A. I don't know how much it increased the cost, because I didn't know anything about the cost of the manufacture of the drill.

Mr. BOWMAN: How do you know it increased the cost at all?

WITNESS: By the efficiency of the drill.

Mr. BOWMAN: Is there anything in the work of the improvements to indicate that it must have increased the cost in making them?

WITNESS: Yes, sir.

Mr. BOWMAN: We will offer these invoices in evidence.

The COURT: Very well. Let them be filed and considered as read to the jury. Exhibit "A A".

(Said invoices were as follows to wit:) #1. "Louisville, Kentucky, 9-22-1902. M. Depp and Holman, Glasgow, Ky. In account with Empire Drill Company. Invoice No. 1871. L. Terms Contract. Sheet No. 5. A. 1-8-8 C and S. Disk. 64.50. 64.50. Returned on notes #10384L #10384L. #10386L. W. D. Campbell. We bill all shipments at one uniform price. Settlements will be made as per contract.

76 #2. Louisville, Kentucky 9-8 1902. M. Depp, Hughes and Holman, Glasgow, Ky. In account with Empire Drill Company. Invoice No. 1507 L. Terms Contract. Sheet No. 5. a. #267 .50 1 #269 .50, \$.100. Delivered to W. H. Newman & Co. City.

#3. Louisville, Ky., Aug. 14th, 1902. M. Depp and Holman, Glasgow, Ky. In account with Empire Drill Company, Invoice No. 1304 L. Terms—Contract. Sheet No. 5. a. 1-6-8 a. and S. S. H. #68774 \$55.50.

We bill all shipments at one uniform price.

Settlements will be made as per contract.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You are basing the increased cost on the increased efficiency?

A. No, sir.

Q. Tell us in what respect has there been an actual increase in the cost of the manufacture of that improvement?

A. Simply because they put in more steel.

Q. More steel?

A. Yes, sir; and more malleable iron.

Q. Why would that?

A. It means more machine work.

Q. How much more?

A. Quite a good deal.

Q. How much per cent?

A. I will say seventy five.

77 Q. Seventy five per cent?

A. Machine work.

Q. Increased seventy five per cent in the machine by reason of the improvements?

A. No, not necessarily so. I am speaking of machine work. They used some very few mal-ables in those days, and now they use a good — more steel, and a great many more mal-able parts.

Q. You say it increased seventy five per cent on what?

A. In the machine work; lathing for instance. I don't know what it cost, but the steel work and the shafting in there is a good deal more expensive than it used to be.

Q. Did it increase the cost of labor seventy five per cent?

A. Yes, sir; in making the drill.

Q. How much.

A. On the machine work.

Q. What was the increase in the addition of material, if any, used?

A. The addition of material?

Q. Yes, sir.

A. What was the increased cost?

Q. What per cent increase in cost was there?

A. I couldn't say.

Q. Was there any?

A. Yes, sir; there was bound to be.

Q. How much is the labor cost of a machine?

A. To put a machine up?

78 Q. No, the cost to manufacture the machine, the labor cost?

A. I don't know.

Q. How, upon what basis do you estimate the seventy five per cent increase in the cost of labor?

A. Simply because I know those old Empires in those days was mostly cast steel; and to-day it is mal-able iron, and I know the mechanical work on it is more.

Q. When were you in one of those machine shops?

A. I was in one of them three or four weeks ago.

Q. Did you inquire into the cost of labor in those shops?

A. No, sir; that was not my business.

Q. Did you inquire as to the cost of any particular labor?

A. No, sir.

Q. Do you know to-day, the cost of any particular labor in any of those shops?

A. Any particular labor?

Q. Yes, sir?

A. Outside of my own, I don't.

Q. You are not in the shops?

A. No, sir.

Q. And yet you tell the jury that there has been an increase of seventy five per cent in the labor by reason of those additional improvements upon that machine?

A. But you asked me what I thought it was; I think it was that. It couldn't be anything less.

Recross-examination.

By Mr. BOWMAN, of counsel for the defendant:

79 Q. You mean, Mr. Rogers that there has been an increase of seventy five per cent in the wages paid the mechanics, or an increase of seventy five per cent in the amount of machine work on the drill?

A. I meant the machine work on the drill.

Q. Was the increase on the drill?

A. Yes, sir; very little machine work on the old Empire. That is, what we term machine work.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. What do you mean by machine work?

A. Simply taking up the work and fitting up these pieces that go on a wheat drill, and the work in the turning lathe, for instance, the additional extra time is bound of course to be extra cost.

Q. Do you employ any repair men now, out in the country to repair your machines if they become broken or anything?

A. If anything like that comes up, it is just very seldom, and to tell you the truth, I go and fix it myself.

Q. You are a repair man also, as well as a traveling agent?

A. I take care of the drills that way, yes, sir.

Q. Of the whole thing?

A. The Empire, Hoosier and Kentucky.

Q. Prior to the combination did you do that for the Empire?

A. Yes, sir.

Q. Who did it for the Hoosier?

A. Mr. Holdeman.

Q. Who for the Kentucky?

80 A. The man that had the—I said awhile ago they didn't have any regular man.

Q. What all of those men did then you do now for those three drills, the Empire, Hoosier, and Kentucky?

A. Not I alone.

Q. Who else.

A. Mr. Harris has got part of my territory.

Q. Didn't you say you did all repair work necessary to be done and put on those machines?

A. Yes, sir.

Q. You do it for all three of those, where heretofore they had three men?

A. Yes, sir; but let me explain. It took a good deal of expert work in those days.

Q. You had a great many more experts in those days then?

A. Yes, sir; because the machines wasn't as good.

Q. They paid the experts a pretty good price?

A. No, sir; not extraordinary.

Q. A fairly good price?

A. Yes, sir; they were willing to go for it.

Q. What did you pay them?

A. I expect they got about——

Mr. BOWMAN: He has never said he knew.

A. (Con.) No, sir; I don't know.

Q. You have some Idea of what they were paid?

A. Yes, sir.

Q. What was it?

A. Sixty or sixty five dollars per month.

81 Q. Now then, by reason of the improved parts of this machinery, they save the cost of those repair men, don't they?

A. We do to a certain extent, yes, sir.

Re-cross-examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. Can you name anybody in your territory who were repair men?

A. Nobody as a regular repair man.

Q. Can you name anybody that ever came to your territory as a repair man?

A. Not as a regular repair man.

Q. At any time to make any repair of any drill?

A. That came in my territory?

Q. Yes, sir.

A. No, sir.

Q. Isn't it a fact that the repair of drills is a very simple matter, if the repair part is furnished the farmer he can put it on himself?

A. Nine out of ten do.

Q. Hasn't that always been the case with the drill?

A. Yes, sir.

Q. Can you recall an instance before this combination where there was a repair man sent by the Empire Drill Company, into your territory to repair a drill?

A. No, I can't call a single instance, I don't believe.

Q. Can you recall the name of a single man employed as a repair man for that purpose?

A. Not any more than I was.

82 Q. In your territory, but you?

A. No, sir.

Q. Do you recall a single instance, before the combination, while you were working for the Empire Drill Company, where they had a repair man to come into that territory?

A. No, sir.

Q. What did you mean by your testimony that there were repair men used?

Mr. CARROLL: We object to that.

The COURT: Sustain the objection.

Q. I would like to have an explanation?

A. If I said repair men, I misunderstood the question; for I would go and repair the machines if the farmer couldn't do it. The farmer could usually put them on, that is the repair men we had.

Q. Was there anybody else in your territory than yourself?

A. No, sir; not for that purpose.

Q. How much oftener did you have to go in the country in 1902 to make repairs than you do now?

A. Well, I think I had to go out some more, because, as I say, the drills were not—The parts of the drill, say the disk furrow opener for instance, if it would get out of fix, the disk drill was pretty new you know, and the draw bars in there the carbon, if they were twisted, we would have to straighten them.

Q. Isn't it a fact that when the new improvements on the articles were put out, that sometimes you would have to go out oftener, and get it started, than you would after you would get it introduced to the farmer, and he understood it; and that then you don't have to go out any more on that article?

A. No, sir.

Q. Is there any part of the drill of such a nature that a farmer couldn't repair it himself, if he understood the drill and got the repair?

A. I don't believe there is. I believe in buying a drill, if the man gives it the proper attention, when he is working with it in the field, when he buys it if the dealer explains it, I don't think there is anything but what the farmer can fix about it.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Who were those parties that got the sixty and sixty-five dollars per month, you testified about a while ago?

A. Those repairers.

Q. What were they paid the sixty and sixty five dollars a month for?

A. Judge, they are the same men I spoke of before dinner as being sometimes, extra men for a few weeks or months.

Q. You don't have them now?

A. No, sir.

(And further the witness sayeth not.)

84 W. B. MUNN having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You have been sworn?

A. Yes, sir.

Q. Where do you live?

A. Louisville.

Q. What business are you engaged in?

A. I am engaged in the vinegar and pickel business.

Q. Are you a stock-holder in the American Seeding Machine Company?

A. I don't know whether I am or not. I own no stock in my own name. All of the stock I have is in escrow. I sold all of the stock I had when I severed my connection with the company in 1908, except a small lot that is held in escrow for the liabilities of our Company.

Q. It is in your name but it is pledged?

A. No, sir; it is held in escrow for liabilities.

Q. In your name?

A. Yes, sir; it is endorsed. I don't know whether it is in my name, or the name of the trustee.

Q. What was your business prior to 1902?

A. I was president of the Brennan & Company, Southwestern Agricultural Works.

Q. What machine did they make; did they manufacture any drill?

A. Yes, sir.

Q. What?

85 A. The Kentucky Drill.

Q. Do you know what it sold for to the dealer?

A. We had a great many sizes.

Q. The eight by eight?

A. My recollection is—You mean the price prior to 1903?

Q. Yes, sir.

A. My recollection is that prior to the year of 1903 it sold for about Forty Dollars; forty or forty one.

Q. What was the seeder attachment sold for?

A. Two dollars.

Q. And the fertilizer attachment?

A. My recollection is sixteen dollars.

Q. That would make the drill fifty eight dollars, complete with the attachments?

A. Yes, sir; fifty eight or fifty nine dollars.

Q. You said two; sixteen, and forty?

A. I said forty or forty one.

Q. Mr. Munn, when did the Southwestern Agricultural Company go out of business?

A. March, 1903.

Q. What caused it to go out?

A. It went into the American Seeding Machine Company.

Q. Explain to the jury what you mean?

A. You mean give the history of it.

Q. In just as few words as possible, explain what you mean by going into it; you mean it formed a part of the American Seeding Machine Company?

A. Yes, sir.

Q. What other companies went to form that Company?

86 A. The Hoosier Drill Company, of Richmond, Indiana. The Superior Drill Company, of Springfield, Ohio. The Bickford & Hoffman Company, and the Empire Drill Company, of Shortsville, New York.

Q. Each of those Companies, besides the Kentucky Drill Company were doing business in Kentucky?

A. I think, so far as I recollect, most all of them.

Q. All of them were doing business?

A. Yes, sir.

Q. What did you do after the Combination?

A. You mean personally?

Q. Yes, sir?

A. I had charge of the Factory at Louisville.

Q. In what capacity?

A. Manager.

Q. How long did you so continue?

A. Until June, 1908.

Q. Then what happened?

A. The Factory was wound up, and absorbed in the Hoosier Drill Division of the American Seeding Machine Company over at Richmond, Indiana.

Q. Then did you have any connection with the Company in an official capacity?

A. No, sir.

Q. What other officers ceased to have any official connection with the Company, who were formerly of the Kentucky Drill Company, or connected with the plant in Louisville?

A. I think they were all absorbed in the American Seeding Machine Company.

87 Q. You were manager, did you have an Assistant manager?

A. No, sir. There was a sales manager.

Q. What became of him?

A. He went to Richmond.

Q. All of the others besides yourself go to Richmond?

A. Yes, sir that is my recollection, that almost all of the Principal Officers went to Richmond.

Q. Your plant was dismantled?

A. Yes, sir.

Q. And ceased after 1908, to do business further in Kentucky?

A. The plant itself ceased to manufacture, yes, sir.

Q. Mr. Munn, what increase in the prices were there in 1904 on those machines?

A. My recollection is that it was about One Dollar in 1904; and one dollar raise after 1903; when that one dollar raise was, whether 1904, 1905, or 1906, is not clear in my mind. It was after the merger though.

Q. Mr. Munn, if the prices were Forty Nine—I mean Fifty Nine or Sixty Dollars in 1903, before the merger, I will ask you to examine this paper, and see if it isn't a price list of the Kentucky Division, that is the Kentucky Drill for 1904?

A. Yes, sir.

Q. What was the increase?

A. It is Forty Two dollars, the plain drill.

Q. Look at the fertilizer?

A. Fifty eight dollars.

Q. That is a sixteen dollar increase?

88 A. Yes, sir.

Q. What is the grain attachment?

A. Two dollars, for the seeder attachment.

Q. That makes the total what?

A. Sixty dollars.

Q. Then, that is the price list for 1904?

A. Yes, sir.

Q. There was an increase of one dollar in 1904?

A. I am not positive. Yes, I think there was an increase of one dollar in 1904.

Q. This combination was formed in March, of 1903?

A. Yes, sir.

Q. Mr. Munn, state what the difference is, if any, in the prices of iron and steel, in the years of 1902, compared with the years you were in this business?

A. In 1902, as I recollect was the high water mark; the prices of iron and steel where were high.

Q. What about 1904, 5 and 6 for iron and steel, were they higher or lower?

A. I think they were lower. I think about 1908—My recollection is that in 1903, '04 and '05 they were lower than they were in 1902.

Q. Didn't we have what is called a panic in 1907?

A. Yes, sir.

Q. Didn't the prices of iron and steel and that character of raw material which goes to make these machines, decrease in value, and continue to decrease until 1911?

A. I had very little to do with the buying of the iron and steel in 1906 and 1907. I am not clear whether it declined or not.

89 Q. What is your best recollection now, as the prices then compared with 1902?

A. My recollection is that the prices should have been lower in 1906 and 1907.

Q. You couldn't answer for the period since then?

A. No, sir; I had no opportunity or occasion to examine the prices for 1908 and after that.

Q. What were the business conditions since 1903, up to and including 1911, were they normal or abnormal; what I mean is was there any exciting causes that occasioned a great or material change, say in the increase or decrease in the prices, or did the prices continue to go up steadily or go down steadily, or did they remain stationary; if in the latter case normal, and in the other case abnormal?

A. I would think the prices gradually advanced in almost everything we use.

Q. Except steel and iron?

A. And I should think the price of steel and iron, from 1902 to 1906 or 1907, would have declined, I am not sure whether it did or not.

Q. What was the market conditions of business, during that period, from 1903, up to the present time, were they normal or abnormal?

A. As far as I know they were normal.

Q. Of course, you have been in active business during that period?

A. From 1903 up to 1908?

Q. Yes, sir?

A. Yes, sir.

90 Q. And from 1908 up to the present time?

A. For a part of the time I was not.

Q. For what time?

A. Six months.

Q. Of course there was competition between the various companies in Kentucky, prior to the combination?

A. Yes, sir; and there was afterwards.

Q. There was keen competition afterwards, was there?

A. Yes, sir.

Q. Between the agents, or was the American Seeding Machine Company competing with itself?

A. The different divisions. The Company was divided into Divisions, and each division retained its old name, excepting our Division, our name was Brennan Company, Southwestern Agricultural Works, and it was changed to the Kentucky Division. They were competing with each other.

Q. Of course, the proceeds all went to the Fountain Head?

A. Yes, sir.

Q. Mr. Munn, you had agents in Kentucky?

A. Yes, sir.

Q. Who represented you exclusively?

A. Yes, sir.

Q. And the other Companies had agents in Kentucky?

A. Yes, sir.

Q. You had your force of clerks and other employes, house men and warehouse men, and your manufacturing establishment and things of that kind in Louisville?

A. Yes, sir.

91 Q. Can you now state from your recollection what the pay roll of this company was, along those lines, about the pay roll?

A. You mean weekly or monthly?

Q. Well either way?

A. I should think it amounted to about One Thousand or Fifteen Hundred Dollars a week.

Q. Did that include the expenses of your men on the road?

A. No, sir.

Q. And in addition to that you paid your traveling men?

A. Yes, sir.

Q. Did that include your rents?

A. We owned the property.

Q. Do you know what was done with the property, whether it was afterwards sold?

A. Yes, sir.

Q. Everything was sold?

A. Yes, sir.

Q. What were the expenses on the road; do you know?

A. I don't know, no, sir.

Q. Could you approximate it?

A. I could not. I did not have supervision of that, and didn't give it any detailed attention. That was under the management of Mr. Rice.

Q. Was it approximately large or small in amount?

A. Not very large. We didn't have many traveling men on the road.

Q. You sold mainly to jobbers?

A. Most of our output was to the jobbers, in the drill lines.

92 Q. Mr. Munn, you said that after the combination, or the consolidation or merger, whatever you choose to call it was made in March, 1903, there were various divisions established; now what do you mean by Division established?

A. Each Factory was considered individual, and it was called by their designated names.

Q. And were allotted different territories?

A. No; they were all competing in the same territory.

Q. Now the prices; do you know whether or not the prices of these machines were fixed at the same price?

A. My recollection is that the prices, so far as possible for the different grain drills, of the individual makes were standardized, by making them the same.

Q. In other words, an eight by eight drill, whether of a Hoosier, Empire, or Kentucky, was made to the dealer at the same price?

A. My recollection is that they were practically the same price before that.

Q. They were different?

A. Very little.

Q. How much?

A. I don't think it exceeded one dollar or two dollars.

Q. Afterwards, they were always fixed at the same price?

A. Yes, sir.

Q. And they were fixed by the American Seeding Machine Company?

A. Yes, sir.

Q. The amalgamated Company?

A. Yes, sir.

93 Q. They printed the prices and give them to the various agents by which they are governed?

A. Yes, sir; they followed the principles of the Old Companies in that respect.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Mr. Munn Your attention was called to the question of the difference in the prices of the Kentucky Drill, on the price list of 1904, and the price list of 1902?

A. No price list of 1902 was shown to me.

Q. You said you thought the prices in 1902 was Forty Nine Dollars?

A. 1902; Yes, sir.

Q. In 1902, and that the price of that drill——

A. No, I said forty or forty one dollars.

Q. With the sixteen Dollar fertilizer attachment and the two dollars for the seeder, making a total of forty eight or forty nine; or I mean fifty eight or fifty nine?

A. Yes, sir.

Q. For the machine?

A. Yes, sir.

Q. And on the 1904 price list it appeared to be sixty Dollars?

A. Yes, sir.

Q. Do you recall the fact that the 1903 price list also showed it to be sixty Dollars?

A. Yes, sir; I think the price was the same.

Q. As it was in 1904?

A. Yes, sir.

94 Q. In other words, the price was changed between 1902 and 1903, that is the price for 1903 was increased over the price for 1902?

A. I think it was; I think the price of 1903 was increased over the price of 1902.

Q. So the price of the Kentucky drill for 1903, '04, and '05 and possibly '06, or whenever the one dollar raise came in you are not sure, was arranged, and was the same?

A. Yes, sir; the same.

Q. Whatever the price was in 1903, it continued by the combination Company until they made the one dollar raise?

A. Yes, sir.

Q. So if the price which appeared in 1904 to be \$60.00, it was probably \$60.00 in 1903 also?

A. Yes, sir.

Q. There was no change between the 1903 and 1904 price?

A. My recollection is that the 1903 and 1904 price was the same.

Q. It was changed one dollar after that?

A. Yes, sir.

Q. And it was changed between the 1902 and 1903 price?

A. My recollection is that it was; and I think the 1903 was the same as the 1904 price.

Q. That is, the list on which the goods were delivered in 1903?

A. Yes, sir.

Q. This is the list on which the goods were delivered in 1904?

A. Yes, sir.

95 Q. That would be gotten out and put in the hands of the Agents in the Fall of 1903, and would be called the 1904 price list?

A. Yes, sir. The price list depends on the trade. I think that price list covered the Summer trade, it was put out in the early spring.

Q. Now you take Kentucky, it is a Fall trade?

A. Mostly Fall trade. Some summer trade.

Q. This price list would be the one that the goods would be sold form in Kentucky in the Fall of 1903; that is they would take the orders in the Fall of 1903 for the delivery in 1904, on this price list?

A. Yes, sir.

Q. This is the price list that governs *ofr* delivery in the year it names?

A. That is right.

Q. Those deliveries may be sold, that is the goods, in the year preceding?

A. In the latter part of the year, yes, sir.

Q. So the price list, if it was the one governing the delivery of 1903, would be marked 1902?

A. No; would be marked 1903.

Q. I mean the delivery for 1903 the list would be marked 1903, but that would be the business and goods sold in 1902 at those prices?

A. Yes, sir, or early part of 1903. The price list is marked for the year of delivery.

Q. So that the price list for the Kentucky Drill for 1903 the price list immediately preceding this was fixed by the
96 Kentucky Drill Company itself?

A. By the predecessor of the Kentucky Drill Company.

Q. What was the name the Brennan Company, when the Seeding Machine Company was formed?

A. Yes, sir; Brennan Company Southwestern Agricultural Company.

Q. That Corporation, of which you were President fixed the price list for 1903?

A. Yes, sir.

Q. The American Seeding Machine Company had nothing to do with it?

A. From, in 1903, March, there was so many things to attend to, contemplating the formation of this Company, I didn't pay any attention to the price list that year.

Q. Didn't they have to take the price lists of the old Companies, because the goods were already contracted for at that price?

A. Yes, sir.

Q. The goods had been sold under those prices, and they had to fill them?

A. Yes, sir.

Q. So the prices at which the American Seeding Company delivered its goods in 1903 were not fixed by it?

A. No, sir.

Q. But were fixed by the individual Companies, prior to the combination, acting independently?

A. Yes, sir.

Q. Those prices so fixed, when they came to the American Seeding Machine Company on these drills, they found there were
97 inconsistencies between the prices?

A. Yes, sir.

Q. Their first act was to bring the prices to a uniform basis?

A. Yes, sir.

Q. In doing that, they reduced the higher prices, instead of raising the lower ones?

A. My recollection is in some cases they did make them uniform. Whether they raised the lower ones, or reduced the higher ones is not clear. My recollection is there was a more or less compromise in them.

Q. Isn't it a fact that they took the prices of the Richmond Factory, which was the lowest, or as low, yours and the Richmond, and brought the others to it as a standard?

A. I think so.

Q. Did you attend that meeting?

A. Yes, sir.

Q. Do you recall the fight by the Superior People about reducing their prices?

A. No, sir. There was a decided opposition to raising the prices from all of us. We did not intend to raise the prices until we absolutely had to, by the advance of the raw material.

Q. Isn't it a fact that in July—— Didn't they lower the high ones, instead of raising the lower ones?

A. I don't know whether it was or not. I think it was.

Q. You spoke of the acquisition by the American Seeding Machine Company of your Kentucky plant; it also acquired your machinery, tools, inventory, and accounts receivable?

98 A. Everything we had.

Q. It didn't acquire your cash?

A. No, sir.

Q. And did not acquire your debts?

A. Yes, sir; it assumed the debts after that.

Q. It didn't acquire your debts as a matter of purchase?

A. No, sir.

Q. It was made in a subsequent transaction?

A. I don't think at the time of the merger, it assumed our receivables. The whole settlement for the receivables was made afterwards.

Q. They were to take the receivables?

A. Yes, sir.

Q. And the inventory, plant, and machinery?

A. Yes, sir.

Q. You were to pay the debts?

A. No, sir, they paid them.

Q. Isn't this stock put up to protect them?

A. No, sir.

Q. How was the value of that paid for?

A. By stock in the American Seeding Machine Company.

Q. What kind of stock?

A. Preferred and Common.

Q. How did the value compare with the value of the property?

A. With the exception of the Common stock. I was on the Inventory Committee, and we considered it as if the plant was paid for in stock for its fair value.

Q. The preferred stock at par?

A. Yes, sir.

99 Q. The preferred stock of the combined Company was issued for the what was ascertained to be the actual value of the property turned over?

A. That is what we aimed to accomplish.

Q. What is the fact?

A. As far as we could judge, it was so.

Q. You were competent judges?

A. Yes, sir.

Q. How much did that amount to?

A. The total issue of stock?

Q. The preferred stock issued to the Companies going in, for their companies?

A. Seven million and a half preferred and seven million and a half common was the total capitalization.

Q. Of the New Jersey Corporation?

A. Yes, sir. I don't believe all of that was issued for the plants.

Q. Don't you remember it was a little over Six Million Dollars?

A. I think there was something like One and three fourths Million left in the Treasurer.

Q. Practically six Million Dollars was turned over to the American Seeding Machine Company, and for that there was that much Preferred stock issued?

A. Yes, sir.

Q. The Common stock was issued as a bonus?

A. Yes, sir.

Q. What did it represent?

A. The Good Will.

100 Q. No good will was figured in the value?

A. No, sir.

Q. What became of that Common Stock?

A. The Stock Holders held almost all of the Common Stock. It was held by the stock holders for several years, that is two or three years, and they got together and turned it back in the *the* Treasurer of the Company.

Q. It was surrendered and canceled?

A. Yes, sir.

Q. They were satisfied it was not of any value, and would not become of any value?

A. So far as I know, none of *of* it was marketed to the public.

Q. It was surrendered back, and nobody realized anything for it?

A. No, sir.

Q. The preferred stock that was issued was the only stock?

A. Yes, sir.

Q. There was no promotion scheme?

A. There was very little trading in the stock.

Q. You didn't employ any New York people to negotiate it for you?

Mr. CARROLL: We object to that.

A. No, sir.

Q. The present Company here before the Court didn't exist in 1903?

A. No, sir.

Q. When was it formed?

A. It was afterwards re-organized into an Ohio Company.
101 The exact year, I have forgotten. I think it was about four years afterwards. Probably in 1907 or 1908.

Q. Do you know the details of the capitalization of the Ohio Company?

A. It organized and has seven and a half million Dollars the total stock; of which, my recollection is there were Five Million preferred. I mean Five Million Common and Two Million and a Half preferred Stock.

Q. The Five Million Dollars of Common stock, and a little over One Million Preferred issued to the Stock holders for their stock in the old New Jersey Company?

A. Yes, sir.

Q. What became of the balance of the Preferred Stock of the American Seeding Machine Company.

A. I don't know that I am competent to say.

Q. Don't presume, if you don't know?

A. I don't know.

Q. Mr. Munn, your business was largely in the Northwest?

A. Yes, sir; largely in the north-west.

Q. You had comparatively little business in Kentucky?

A. Except in the northwest; the large bulk of our trade was there.

Q. You didn't spend much for travelers in Kentucky?

A. Very little.

Q. The Empire Drill Company was largely in the East?

A. Yes, sir.

Q. It had some business in Kentucky?

A. Yes, sir.

Q. The Bickford & Huffman Company had no business in Kentucky?

102 A. Very little, I think.

Q. Where is its business?

A. In the Central and New York States; there is the volume of their trade.

Q. In forming this combination among you manufacturers of this line of goods, what was the purpose of that combination?

A. The purpose of the combination was to effect economy in the manufacture of the machines. As the different companies made a

variety of implements, no one Company should make. The object was to be able to ship in mixed cars, and also by effecting the merger, the combination thought to improve the machines a great deal, and thought they could do this a great deal better by taking the expert mechanics of all of us concerns, and combining them together, and put all of their efforts to improve the entire line. And it is much better than it was in those days. There was never, at any time, during any of the preliminary meetings, or afterwards, with the exception of one, any thing said or any talk concerning the advance in the prices, and that the object of the merger was to advance the price.

Q. Was that the object of the merger?

A. No, sir, it was not.

Q. What ability did the company acquire by the purchase or the formation of this company, to control the drill business, by what it acquired?

A. We canvassed that to the best of our ability, and we concluded it amounted to about forty five or fifty per cent of the entire
103 drill out put of the Country.

Q. How many manufacturers of drills were there outside of this combination?

A. I think fifteen or twenty.

Q. Competing with you in all parts of the country?

A. Yes, sir.

Q. Some of them having more trade in one part of the country, and others more in other parts?

A. Yes, sir. Some of their drills were adapted to some parts of the country, and they all sold, so far as I know, all over the country.

Q. It was quite difficult to figure, it equal, as it may have been more trade in one country than in another?

A. Yes, sir.

Q. You met them in competition everywhere?

A. Yes, sir.

Q. They had drills along the same lines with you, adapted to the same purposes?

A. Yes, sir.

Q. As far as the facilities to deliver the goods, those outside companies had the facilities, if they could get the trade?

A. I know in a particular suit one of those companies, the Dowagiac Company of Michigan swore they could supply the entire trade of the northwest; prior to the merger.

Q. So if these companies could get the trade, they could make the goods and deliver them for all of the trade?

A. Yes, sir.

Q. You say the changes in the prices that were made in
104 these drills there was a raise of one dollar in the price that was made in 1906, why was that made?

A. As I recollect it, prior to the merger the price of material had advanced to, I disremember the figure, it was almost impossible to get iron and steel up to the standard, and there was an increase in the price of the grain drill. But when we organized we adopted

practically the same prices that were then in force up to 1905, '06, and possibly 1907. We concluded on account of the advance in the raw material to advance the price one dollar. And we advanced it on the 20th of July; I think on the shoe drill one dollar, and also on the eight disk drill one dollar.

Q. You operated the Division at Louisville, Kentucky, did you make any profits in that business after the merger?

A. The drill factory at Louisville made no profits.

Q. Why?

A. Because we had an old style factory and manufacturing facilities that were out of date. We were on two sides of the street, with a car track running up and down the street, and that increased the cost of laboring, in chulling we couldn't compete with the modern factories.

Q. During the years, prior to that time, do you remember what the profits were?

A. Prior to the merger?

Q. No, sir; after?

A. What year?

Q. All of those years; do you remember what they were?

105 A. No, sir.

Q. Do you know whether they were large or small?

A. I know that after the merger as long as I was connected with the Company no one year was there made any excessive profits. We had about all we could do to get the dividend of six per cent on the preferred stock.

Q. In 1905, were you able to meet the dividend?

A. Paid it out of the surplus.

Q. Wasn't that in 1904 they did that?

A. I don't remember.

Q. Wasn't it in 1905 they didn't pay any?

A. I know it was pretty hard.

Q. In 1905, didn't they fail to pay any dividend at all?

A. Yes, sir; one year they passed the dividend.

Q. In the drill business, is there any necessity for expert repair men to be kept on the job of looking after the machines, and keeping them in repair, in the field?

A. After they are sold?

Q. Yes, sir.

A. Not unless there is a failure in the construction of some kind. If they put out a drill, and after it is sold discover some defect, it is always necessary for the Factory to send new parts and where the local salesman couldn't attach them, that was not very often, the breakage was not uncommon.

Q. It is usually the case, in ninety-nine cases out of a hundred that the farmer can put them on himself?

A. Yes, sir.

Q. That is not the case with repairs of binders?

106 A. No, sir. I know in the Northwest, in *who* years we had very heavy breakage. They used a large machine, and the ground is very light, and it requires a peculiar construction,

and we had a great deal of breakage up there. But we never sent over two men to that entire territory, possibly three, all together, it was all done by the local dealer.

Q. If a drill is furnished to the dealer that don't wear out, or break, it simply operates to deprive him of selling the repairs?

A. That is true.

Q. What is the nature of the manufacturing business, the manufacture of agricultural implements, in regard to a man being able to quit after he has started in that?

Mr. CARROLL: We object to that.

Q. As to the ability of a man to embark in the business of manufacturing agricultural implements and quit, and get out, after he starts?

Mr. CARROLL: We object.

The COURT: Sustain the objection.

Mr. BOWMAN: Give us an exception.

Q. Mr. Munn, what per cent of the net profits is available for dividends to stock holders?

A. Mr. Bowman, I should think the only way to tell, and the way we did was to set aside a certain per cent for dividends and the balance aside for surplus. We usually set aside for surplus forty or fifty per cent of the earnings. The profits of the year. Of
107 course each Company has its way of doing business.

Q. Isn't it a fact that the business, if successful, will continually absorb more capital?

A. A manufacturing business can't stand still. It either grows upward or downward. If it is growing upward, it requires more capital, and it is absolutely necessary for the growing trade to have more money.

Q. That is one of the reasons that makes it impossible to use more than fifty per cent of the net book profits for dividend profits?

A. I have never had any connection with one that used that much of the profits for dividends.

Q. The profit of the defendant Company is dependent upon its doing a large volume of business?

A. Yes, sir; all manufacturing concerns must do business up to a certain point for the profits which carry the overhead charges, the superintendent salaries and all non-productive labor; all of the labor that doesn't produce the goods is called over-head charges. And they must sell a certain quantity to produce profits, which must go to defray and to make that over head charges. After they have sold enough to take that over head charges then they commence making money for dividends.

Q. Do you know how the total output of the defendant Company compares with the aggregate output of the Companies the ones that went into the combination?

A. It is much larger.

Q. What has been the effort and tendency of the defendant company in regard to that, all of the time?

A. To increase its output.

108 Redirect examination.

By Mr. CARROLL, of counsel for Commonwealth:

Q. Mr. Munn, I didn't catch clearly what the capital of the American Seeding Machine Company originally was?

A. The authorized Capital was Seven Million and a half of preferred and Seven Million and a half Common. The Common, represented the good will, and was issued for that; but the authorized preferred stock represented the property they bought.

Q. How much of that preferred was issued?

A. My recollection is it was about Six Million Dollars.

Q. What became of the Million and a half?

A. It was kept in the *treasurer* of the Company.

Q. What dividend was this preferred stock to pay?

A. My recollection is, Judge, it was either six or seven I think seven per cent stock.

Q. What became of the dividend upon the stock of the Company which was in the *Treasurer*?

A. No dividend was declared on that. It was only declared to the stock holders on the stock issued.

Q. There was no dividend at any time declared upon the common stock?

A. No, sir.

Q. What were those various plants valued at?

A. The plants and property, the whole thing was valued at about Six Million Dollars, or Six Million and a half.

Q. And preferred stock to *the* that estimated value was issued?

109 A. Yes, sir.

Q. That stock was to bear seven per cent?

A. Yes, sir.

Q. Now did I understand you to say that one year the Kentucky Drill Company, paid no dividend, or was it the American Seeding Machine Company?

A. The American Seeding Machine Company.

Q. What year was that?

A. I don't remember.

Q. How long did that American Seeding Machine Company continue to exist?

A. It started in 1903, and the American Seeding Machine Company went out of business, of New Jersey, started March 1903, and run until 1906 or 1907, when it was re-organized into an Ohio Corporation.

Q. What was the capital stock of the Ohio Corporation, of the same name?

A. The Common stock was retired and turned back into the *Treasurer* of the Company, and wiped out. The Ohio Company's Capital was Seven Million and a half authorized capital; of which there was Five Million Common, and two and a half Million preferred.

Q. What dividend did the Preferred pay?

A. Six or seven.

Q. What did the Common pay?

A. It didn't pay anything at first; it pays four per cent.

Q. All of that stock issued?

A. Yes, sir.

110 Q. This Company; this merger was formed for the purpose of economy?

A. One of the main purposes; and one other purpose that was quite a strong feature, that was the Companies learned that the International Harvester Company were going into the drill business?

Q. And you formed this company for the purpose of preventing the International Harvester Company from going into the drill business?

A. No, sir; we couldn't prevent them. The forming of the company, the primary purpose was economy; and at the same time, to be able to compete with them if they did.

Q. As a matter of fact it is competing and more than competing with the International Harvester Company?

A. They are now.

Q. Isn't it a fact that the International Harvester Company now takes over all of the output of the American Seeding Machine Company?

A. I have heard that it is so; yes, sir. I don't know that it is a fact.

Q. What as to the Springfield branch, hasn't the International Harvester Company taken it over?

A. I never heard it if it has; only as to the Richmond branch.

Mr. BOWMAN: We object to that.

The COURT: I sustain the objection.

Q. There was an actual advance in the price of the Kentucky drill after the merger was formed?

A. Yes, sir; there was an actual advance in the price
111 After two or three years, after it formed one dollar per drill.

Q. Are you positive, Mr. Munn that there was not an advance in 1904?

A. My recollection is that the prices for 1902 and 1903 were practically the same price.

Q. Now, then, isn't it a fact that the price of 1904 was one dollar over the price of 1902 and 1903, your prices, and your price list here shows that fact?

A. No, the price list does not show that fact.

Q. Isn't that one dollar over the price list for 1902?

A. My recollection is that the price is one dollar over the price list of 1902.

Q. Who made that price list for 1903?

A. It was made by the Brennan Company, Southwestern Agricultural Company, prior to the merger.

Q. That one dollar raise?

A. That was for the Summer trade.

Q. That didn't apply to the Fall trade of 1903?

A. No, sir.

Q. The contract for the Fall trade of 1903 was an advance of one dollar over the contract made in 1902?

A. We only made one contract for the Winter trade.

Q. When the contract was made in the Fall of 1903?

A. We had nothing to do with those prices. The winter trade of 1904—For the Fall of 1903 and the Spring of 1904, we had nothing to do with the prices.

Q. Those prices were fixed for the Fall trade of 1904?

A. Yes, sir; Fall and Summer.

112 Q. The Fall and Summer trade of 1904, isn't it a fact that they were increased one dollar over the prices of 1902 and 1903?

A. No; I think the prices of 1902 and 1903 were exactly the same.

Q. But a one dollar raise in 1904?

A. There was a one dollar raise in between 1902 and 1904.

Q. You think the prices of 1902 and 1903 were the same now?

A. I think the change in price was made in 1902 or 1903.

Q. For the 1903 trade?

A. My recollection is that the prices were made by the Brenan company.

Q. Are you certain of that?

A. No, I am not certain.

Q. You say you set aside how much to pay dividends?

A. Seven per cent.

Q. I know, but what per cent of the income?

A. In the Brenan Company, we never set aside anything that way.

Q. The American Seeding Machine Company?

A. They set aside a regular fixed dividend, and the balance would go to surplus.

Q. How much was that surplus?

A. The difference between seven per cent on the Common stock, and whatever the earnings were.

Q. Do you know what the earnings amounted to?

A. No, sir.

Q. Have you any idea?

113 A. No, sir; I have no recollection.

Q. There was a surplus in addition to the dividend?

A. Some years there was.

Q. What year was there none?

A. In 1904, or 1905 there was no surplus at all.

Q. Was there any year that they had to draw on the surplus to pay the dividend?

A. Yes, sir.

Q. Was there any year they failed to pay any dividend?

A. Yes, sir.

Q. Was that dividend made up afterwards?

A. No, sir. I don't think it was.

Q. Are you certain?

A. No, sir.

Q. Do you know what their surplus is now?

A. I do not.

Q. The more machines you manufacture, as a rule, the less the cost is per machine, isn't that true?

A. Yes, sir; generally true.

Q. And as labor becomes more efficient, or has it become less efficient, as a rule; I mean the character of labor?

A. Just about the same.

Q. Has the machinery become more efficient?

A. Yes, sir.

Q. For the manufacture?

A. You mean the drills?

Q. No; I mean the machinery for the manufacture of drills?

A. Sure, it is all the time becoming more efficient.

114 Q. By reason of that increased efficiency in the manufacturer's machinery the establishment is able to make greater number of machines?

A. That is the principal reason for the change.

Q. The larger the output the less the individual cost?

A. That is the general case. It depends on the cost of the raw material.

Q. Assuming the cost of raw material has been the same, the increase in the output has reduced the cost of the individual machine?

A. Generally speaking.

Q. The American Seeding Machine Company, has been continually increasing?

A. Yes, sir.

Q. In addition to the purpose of economy, wasn't there the further purpose to prevent competition between those companies which entered into that merger; wasn't that one of the considerations?

A. No, because you take our company for instance, if we had continued in business much longer, we were making no money in the last few years, and if we had continued in business much longer we would have wound up.

Q. On account of the competition?

A. On account of the old style factory.

Q. Your factory was dismantled?

A. Yes, sir.

Q. The whole thing was turned over to Richmond?

A. Yes, sir.

115 Q. They had improved appliances, and more efficient labor, and in every way were able to do the work better than you were at Louisville?

A. Yes, sir.

Q. And it was done better?

A. Yes, sir.

Q. And done cheaper?

A. Yes, sir.

Recross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. You speak about the removal of the Kentucky business to Richmond, they had to build an addition to provide for it?

A. Yes, sir; they increased the building and machinery.

Q. You said, Mr. Munn, that the surplus was that which was set aside as providing for dividends on Common stock over seven per cent?

A. If I did; I will correct that. While I was with the Company, the New Jersey Company paid no dividend on the common stock.

Q. What stock did you mean?

A. I meant the preferred stock.

Q. You say the machinery constantly changes in the factory?

A. Yes, sir.

Q. Do you build that changed machinery, or do you have to buy it?

A. Buy it.

Q. That is a constant expense?

A. Yes, sir.

116 Q. If something comes out that is better, what becomes of that you have?

A. It is generally scrap.

Q. What is the value of that scrap?

A. It is sold for old iron; and very seldom find a purchaser for old machinery.

Q. I wish you would state to the Court and jury whether the matter of competition in the drill business has been normal?

A. I think it has. Yes, sir. There are just as many competitors in the market, and probably more drill companies have come into the business, since the formation of the merger, than have gone out.

Q. The market is just as open?

A. Yes, sir.

Q. You were speaking of the issue of stock of the Ohio Company, I thought you said all of that Stock had been issued?

A. No, I said my recollection was that there was Five Million Dollars Common, and two and a half Million Dollars of Preferred. All of the Common was issued, is my recollection, a good while ago since that happened. All of the Preferred stock was not issued; some of it was kept in the Treasurer.

Q. Do you know whether that was since sold, to provide new capital?

A. No, sir, I don't know; I think it was.

(And further the witness sayeth not.)

117 S. C. BRIDWELL having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROL, of counsel for plaintiff:

Q. Mr. Bridwell, where do you live?

A. Shepherdsville, Bullitt county.

Q. How long have you lived in that county?

A. Thirteen years; in the county?

Q. Yes?

A. I was born and raised there.

Q. What is your business?

A. General blacksmith.

Q. Where do you conduct your place of business?

A. At Shepherdsville.

Q. How long have you been there?

A. Thirteen years.

Q. What character of work do you do?

A. General repair work on farm implements.

Q. Before that time, where did you conduct your business?

A. At Mount Washington, in the same county.

Q. How long did you conduct your business there?

A. Pretty much every since I have been a mechanic, for twenty years at least.

Q. Mr. Bridwell, have you been dealing in scrap iron during your business career?

A. Yes, sir; a great deal.

Q. For what length of time have you been dealing in it?

A. Twenty years.

118 Q. Tell the Court and jury what, if any difference there is in the price of scrap iron, say for the years 1900, '01, '02 and '03, and the years 1909 and 1910 and 1911?

A. It is a great deal cheaper now than it was in 1902 and 1903.

Q. What were the prices in 1902, 1903 and along there; what did it sell for on the market, scrap iron?

A. I would say sixty five, or seventy cents per hundred pounds.

Q. What are the prices for which scrap iron can be sold on the market, during the years 1909 and 1910 and up to November, 1911?

A. Forty and forty five cents.

Q. Per hundred?

A. Yes, sir.

Q. What difference is that per hundred?

A. Now and then?

Q. Yes, sir?

A. It is only worth thirty five now, and the best I can get for it per hundred.

Q. What was the difference per hundred in what it sold at in 1900, 1901, and 1902 and——

A. The difference between forty five and seventy.

Q. Thirty cents per hundred?

A. Yes, sir; that is about right.

Q. During your experience in your business have you had occasion to deal with the various farming implements?

A. Yes, sir; some in the way of repairing.

119 Q. What character of farming implements have you dealt with in repairing them?

A. Most all that are used by the farmers.

Q. Have you repaired any drills?

A. Frequently.

Q. What character of drills?

A. Generally what is sold in our neighborhood; mostly Empire, Superior and Buckeye, I believe.

Q. Did you ever have to do any repair work on any Kentucky drill?

A. Some little.

Q. What about the Hoosier drill?

A. I have done some work on the Hoosier drill; not very many sold there though.

Q. What drills are sold there?

A. The Superior, Empire, and Kentucky.

Q. For what length of time have you been engaged in repairing those drills?

A. For thirteen years.

Q. I will ask you to state to the Court and Jury if you are familiar in a general way with the construction of those drills, by reason of having worked with them?

A. To some extent; yes, sir; by repairing the different parts of the drills, I suppose I am familiar with them.

Q. I will ask you to state what difference, if any, is there in the drills that have been made since 1904, 1905, 1906, 1907, 1908, 1909, and 1910, with the drills that were made prior to that time, along in 1900, 1901, 1902 and 1903, so far as your experience goes in repairing them?

120 A. Well, I am bound to say there is **very little on some** parts of the drill. There has been some little improvements on the drill, but not a great deal. Some parts of them are practically about the same as they were when I first knowed them.

Q. Have you seen the late drills on the market, the late Superior?

A. Yes, sir.

Q. Have you examined them?

A. Yes, sir; to some extent.

Q. How do they compare with the old drills, in point of efficiency and construction?

A. With the exception of the fertilizer and seeder, they are practically the same, with very little difference.

Q. What difference if any?

A. The fertilizer feed is some little different.

Q. Those drills heavier or lighter?

A. I can't say they are any heavier.

Q. From their general make up, are they more expensive to make them, than it was the old drills?

Mr. BOWMAN: We object to the question.

The COURT: Overrule the objection.

Mr. BOWMAN: We except.

A. I don't know that I could answer that question properly. It doesn't look to me like there is any more material in this change than there was in the other one; whether there is any more cost in making it, is pretty hard for me to say.

121 Q. How as to durability?

A. It so looks to be as good as the old one.

Q. Is it any better?

A. Possibly it might distribute the fertilizer better; I expect that is about what they claim. I don't know for durability, whether it would be any better at all.

Q. Mr. Bridwell, do you remember the old binders and mowers?

A. Yes, sir.

Q. Twenty and twenty five years ago?

A. I don't know that I could. I remember, too, something about them.

Q. Were they more expensive, or less expensive than the present?

A. I would say they were more.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. You say your familiarity is chiefly with the Superior?

A. Yes, sir; I have had a little more experience than perhaps any other.

Q. You would be more familiar with the changes in that drill than any other?

A. Yes, sir.

Q. Hasn't there been a change in the size of the wheel in that drill?

A. Well, I haven't discovered it.

122 Q. Has the wheel—If the wheel was larger the drill would ride obstructions better?

A. Yes, sir.

Q. It would go over rocks and stumps and so forth better?

A. Yes, sir, and be more durable.

Q. If the hub was larger, and the bearing longer, that would be more expensive?

A. Yes, sir.

Q. And more durable?

A. Yes, sir; I suppose it is. Yes, sir; if it is longer and larger, I suppose it would be.

Q. That would require the lengthening of all of the tubes coming down, if the drill was raised, by reasoning or having larger wheels?

A. Yes, sir; I suppose it would.

Q. Do you know whether or not that state of facts occurred in that Superior drill or not?

A. No, sir; I couldn't say it has.

Q. You don't know whether it has or not? *

A. No, sir; I don't know. I know there is a little difference in the tubes that carry the grain, from what it used to be. Whether there is any difference in the length or not, I wouldn't say.

Q. In other words, you have never taken the old drill and the new one and compared them critically, to see what was done?

A. No, sir.

(And further the witness sayeth not.)

123 A. H. MILLER, having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Where do you live?

A. Elizabethtown, Kentucky.

Q. What is your business?

A. Implements and vehicles and fertilizers.

Q. How long have you been in the business?

A. Two years ago the first of April.

Q. Do you handle any drills?

A. Yes, sir.

Q. What?

A. Hoosier, Empire, and once in a while I sell a Kentucky.

Q. Has there been any increase in the price of those drills?

A. Yes, sir.

Q. How much?

A. Two dollar-, I think.

Q. On what drills?

A. On the Empire and Hoosier.

Q. Any increase on the Kentucky, do you know?

A. I don't know. I have only sold one Kentucky since I have been in business.

Q. Does that increase apply to all of the drills?

124 A. I couldn't tell.

Q. I mean all sizes of the drills that you sell?

A. Yes, sir; I suppose it does; I am not certain. I don't know only the eight by eight drill.

Q. When was that increase made?

A. I think for the 1911 sales.

Q. Do you know whether there was any raise before that time?

A. No, sir.

Q. That is the only raise since you have been in business?

A. Yes, sir.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. When did you say you began business?

A. Two years ago the first of April; twenty eight months ago.

Q. At Elizabethtown?

A. Yes, sir.

Q. Had you been in business elsewhere?

A. No, sir.

Q. Did you succeed somebody there?

A. Yes, sir.

Q. Who preceded you there?

A. Yager & Warren.

Q. You handled these goods?

A. Yes, sir.

125 Q. Did you handle any other drills?

A. I sold one McSherry drill.

Q. Any other drills you could have bought and sold if you had wanted to?

A. I suppose so.

Q. I don't you know so?

A. Yes, sir.

Q. Name some of them you could have bought, if you had wanted to?

A. The Walter A. Woods drill.

Q. The Thomas drill?

A. Yes, sir. I don't know the names of so many of the drills, I suppose I couldn't have gotten any of them.

Q. You have paid to this defendant, American Seeding Machine Company its price for its drills?

A. Yes, sir.

Q. Did they sell those drills to you for more than they were worth?

A. No, sir; I don't think they did.

Q. You were satisfied?

A. Yes, sir.

Q. If you had thought they were charging you more than they were worth, you would have bought some body else'?

A. Yes, sir.

Q. Do you know whether they have made any improvement in the drills since you have been in the business?

A. Yes, sir.

Q. What have they done on the Empire drill?

A. They have put a fertilizer attachment on there to increase the quantity of fertilizer.

126 Q. Does it better feed the fertilizer in the ground?

A. Yes, sir; and you can get a smaller quantity of fertilizer.

Q. Did it increase the ability of the farmer to regulate that?

A. Yes, sir.

Q. Did the nature of the change was it such as would involve any more expense in the building of the drill?

A. Yes, sir.

Q. What drill?

A. The Empire Junior, it is now.

Q. Is there any other changes that have occurred, that have been made on the Empire?

A. Not that I know of.

Q. They don't occur to you?

A. No, sir.

Q. I don't know myself whether there has been or not. You handle a general line of agricultural implements?

A. Yes, sir.

Q. Has there been any increase or advance in the price of these drills disproportionate to the other lines you handle?

A. No, sir; not that I know of. They have all advanced some, in some of the lines.

Q. A large proportion of these drills are wood, the hoppers, the box, and the various kinds of wheels, a-d hubs and tongue, each made of wood?

A. Yes, sir.

127 Q. They have been involved in the raised price of lumber?

A. Yes, sir.

Q. Do you know anything about the increase in the price of lumber?

A. No, sir.

Redirect examination.

By Mr. CARROLL, of counsel for the plaintiff:

Q. Do you know whether or not lumber declined in the last year, in price?

A. I don't know anything about that at all.

Q. When were those improvements you spoke of put on the machine?

A. For last season's drills.

Q. 1911 or 1912?

A. 1911.

Q. Do you know anything about whether or not that improvement cost any more than the old improvement?

A. I don't know.

Q. In your opinion, it looks more efficient?

A. Yes, sir.

Q. From whom did you get those drills?

A. The Richmond Division of the American Seeding Machine Company.

Q. You have to make a contract with it for them?

A. Yes, sir.

Q. Are they on the open market?

A. No, sir.

128 Recross-examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. You say they are not on the open market?

A. No, sir.

Q. The Richmond Division is the Manufacturer of the drill?

A. I suppose so, yes, sir.

Q. And as dealer, you have to make a contract with the Manufacturer?

A. I have.

Q. Can you buy them unless that manufacturer has jobbed them?

A. Yes, sir.

Q. Either direct from the manufacturer, or jobber?

A. Yes, sir.

Q. From the manufacturers through the district through jobbers by block or territory, to the jobber and he sells to the dealer?

A. Yes, sir.

Q. And he attends to the retail business?

A. Yes, sir.

Q. Some agricultural implement manufacturers do part of their business that way, and part of the business the other way?

A. Yes, sir.

Q. You happen to be in the territory where the American Seeding Machine Company does not job its trade?

A. Yes, sir.

Q. Therefore you have to buy it from the Factory?

129 A. Yes, sir.

Mr. CARROLL: We object to the counsel making statements in an interrogative form that way.

(And further the witness sayeth not.)

J. B. LUCAS having been called as a witness on behalf of the plaintiff, and having been first duly sworn and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Have you been sworn?

A. Yes, sir.

Q. State your name to the Court and Jury?

A. J. B. Lucas.

Q. Where do you live?

A. Franklin, Kentucky.

Q. What is your business?

A. Hardware, implements, and machinery.

Q. How long have you been engaged in that business?

A. Six years. I went in business in January, 1906.

Q. Do you handle any drills?

A. Yes, sir.

Q. What drills?

A. I handle the Superior, Hoosier and McSherry.

Q. How long have you handled the Superior and Hoosier?

A. Six years.

130 Q. Has there been any increase in the price since you have handled them?

A. Yes, sir; I think so.

Q. Don't you know?

A. Yes, sir.

Q. How many increases?

A. Well I won't be sure. I know of two dollars, I think that is all.

Q. When was that increase made?

A. It was made for last year's business.

Q. 1911?

A. Yes, sir.

Q. Did that increase apply to both machines?

A. Yes, sir.

Q. To the different sizes of the machines; the six by eight, as well as the eight by eight?

A. I don't handle the six by eight.

Q. What machines do you handle?

A. The eight by eight shoe; and the ten, and twelve shoe.

Q. The same increase apply to all of them?

A. I am not so well posted on the others; I presume it does.

Q. Which ones were the increase made on?

A. On the eight by eight.

Q. Both drills?

A. Yes, sir.

Q. Was there another raise before that time, Mr. Lucas?

A. I don't recall any other. There may have been.

131 Q. You are from Simpson county?

A. Yes, sir.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. How long have you handled these two lines?

A. Since January, 1906.

Q. During that time, you could have bought other drills of the same character if you had wanted to?

A. Yes, sir.

Q. You didn't buy these because you had to buy them?

A. No, sir.

Q. You do handle you say the McSherry?

A. Yes, sir.

Q. In large quantities?

A. We have been handling them two years; we buy them in cars.

Q. In car load lots?

A. Yes, sir.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Is the McSherry the same price?

A. No, sir.

Q. Is it the same, less, or higher?

A. Less.

Q. What is the difference?

A. I don't remember.

Q. Do you remember about the difference?

132 A. I don't remember the exact cost. No, sir.

Q. Approximately?

A. I wouldn't approximate it, because I don't know.

Q. Is there a material difference, or not?

A. It is worth considering, yes, sir.

Q. There is a material difference in the price?

A. Yes, sir.

Recross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Do you sell them at any different price to the farmer?

A. The same price.

Q. You are confined to your territory for the McSherry, that is the arrangement—You say you buy them in car load lots?

A. We have a larger territory on the McSherry drill.

Q. What kind of territory?

A. Several counties.

Q. Do you recall how many?

A. No, I think five or six; I think it is.

Q. You are expected to work those counties?

A. Yes, sir.

Q. And sell to the dealers in the county seats, where you think it advisable to do so?

A. Yes, sir.

Q. You can buy them in car load lots?

A. Yes, sir.

Q. So you have what is known as a jobbing contract?

A. Our contract is written.

133 Q. With all manufacturers, where one is a jobber, he gets a little lower price?

A. Yes, sir.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:—

Q. Isn't this decrease in the price more than the jobber's discount?

A. I don't know what the jobber's discount is on the Hoosier or Superior.

Q. But it is a material difference?

A. Yes, sir.

Q. The McSherry drill is not sold by the American Seeding Machine Company?

A. No, sir.

Recross-examination.

By Mr. BOWMAN, of counsel for defendant:—

Q. You mean a material difference in the prices charged to you?

A. I don't know exactly what I mean; but it is enough difference in the price to interest us.

Q. You are referring to their prices charged to you, by the McSherry Company, the prices charged to you, that was what you meant?

A. Yes, sir.

Q. You didn't mean to extend your answer beyond that?

A. No, sir.

Q. What territory do you handle for the American Seeding Machine Company.

134 A. Simpson County.

Q. How long a county is that?

A. It is fourteen miles the longest way; and it is less than that the other way. I don't know just exactly.

Q. You spoke of handling the goods for the Company; you buy the goods outright?

A. Yes, sir.

Q. You settle with them for them?

A. Yes, sir.

Q. The agent that comes to see you doesn't close any deal but the Company has to approve that?

A. Yes, sir.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:—

Q. You sign a contract with the agent?

A. Yes, sir.

Q. He comes around and makes the settlements with you?

A. Yes, sir; we have a certain time for discount. Of course he don't come and get any of them, but if *ew* want the discount we pay for them on these discount days, and he usually comes along in the Fall, and if any repairs should be given free, he does that.

Q. There are certain repairs to be given free?

A. Yes, sir.

Q. That is in exchange for broken repairs?

A. Yes, sir.

Q. In the Fall settlements, if there is any machines left over, what is done with them?

135 A. We have to pay for them.

Q. Do you give your note without interest?

A. Sometimes we have been getting a carrying clause; a certain per cent; they will carry a certain per cent.

Q. What do you mean by a carrying clause?

A. They will extend it another year without interest.

Q. Give you more time for selling them?

A. Yes, sir.

Q. Simpson county is a rich black farming county?

A. Yes, sir.

Q. It will compare favorably with any other county in that section?

A. Yes, sir.

Q. It is a good agricultural county?

A. Yes, sir.

Q. Does anyone else sell those two machines in Simpson county but yourself?

A. No, sir.

Q. You have the exclusive right and agency for that county?

A. Yes, sir.

Q. With the American Seeding Machine Company, that is in your contract?

A. Yes, sir.

Mr. BOWMAN: We object to what is in the contract; as it is the best evidence.

A. (Con.) I will answer this way; I don't remember particularly about reading that part of the contract, but of course if we sell the Superior Drill, they wouldn't sell it to anybody else in the same town. I don't know whether it is in the contract or not; but I presume it is.

Q. I understand you have an understanding with the Company by parol or otherwise?

A. Yes, sir.

Q. That if you take that agency they will sell to no one else?

A. Yes, sir.

Q. I will ask you to examine this paper and say whether or not that is the same or a copy of the contract you have entered into? (Hands paper to witness.)

A. Yes, sir; it appears to be the same form.

Q. Just look at it and say?

A. Want me to read it.

Q. Read it to yourself, and satisfy yourself whether it is the same one?

A. I presume this is the same contract.

Mr. CARROLL: I will ask that that paper be filed.

The COURT: Very well. Said paper was marked exhibit X. Y.)

A. (Con.) I would like to change that statement. I don't know whether there was anything said about whether they would sell to anybody else in the town or not. But, if we contract for any line, we wouldn't handle it if anybody else did.

Q. You have that kind of an understanding, tacit, or otherwise, with the American Seeding Machine Company?

A. Yes, sir.

137 Recross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. That is the situation with the McSherry?

A. Yes, sir.

Q. That is the situation in trade generally?

A. Yes, sir.

Q. And is nothing unusual as to the American Seeding Machine Company?

A. I don't think so.

Q. That is a common custom of trade?

A. Yes, sir; each dealer handles his own line.

Q. You don't want to work up a trade and let somebody else get the benefit of it?

A. No, sir.

Q. I understand if you put these goods in other people's hands you would get——.

Mr. CARROLL: We object.

The COURT: Sustain the objection.

Q. Is there any other understanding excepting that writing in that regard, between you and the American Seeding Machine Company; except the understanding arising from that?

A. I don't know whether it is mentioned in the contract or not. I never discovered it. But when we contract for a line of goods, we understand, whether it is mentioned or not, that we get that line exclusively; not only drills, but mowers, binders, plows, and everything else.

138 Mr. CARROLL: Do you, when you buy, buy enough to furnish your territory there as you judge would be enough?

WITNESS: We try to buy about what we need.

(And further the witness sayeth not.)

(The contract, exhibit X. Y. referred to by this witness and filed is in words and figures as follows:)

"Contract.

"The American Seeding-Machine Company, Incorporated, of Richmond, Indiana, First party, hereby sells and Dickey & Co. of Glasgow, County of Barren, State of Kentucky, second party, hereby buys Hoosier Brand of Agricultural Implements at the prices and terms stated in this contract, and in the order hereto annexed. In case Second Party shall dissolve partnership or fail to pay when due any sums owing by it to First Party, or for any cause, its financial responsibility shall become impaired, or is not acting in good faith, then said First party may at its option terminate this contract, and all sums owing it by Second Party shall become immediately due and payable; and it is understood and agreed that the goods furnished under this contract, or proceeds thereof, shall be held for the benefit of First Party as collateral security for the ful-

fillment of all obligations incurred hereunder. It is understood and agreed by Second Party that First Party is not to be held liable for any damage by inability to ship goods ordered under this contract, from causes beyond its control, such as strikes, fires, or any providential interference. No agreements, verbal or otherwise, not embodied in this contract shall be binding. This contract is of a continuing nature, and shall cover all goods ordered during the current season of 1911, and shall not be valid until approved by First Party at its office in Richmond, Indiana. In witness whereof, we have hereunto set our hands and seals this 26 day of Nov. 1910. Territory, Glasgow and Vis. Bank, Trigg National Bk. Bank located at Glasgow, Ky. The American Seeding-Machine Co. Incorporated by Geo. D. Rogers, Dickey & Co. By W. E. Bybee, H. T. Dickey, E. Dickey. Less C. L. F. O. B. Cars Louisville, Ky. Car lot F. O. B. cars Glasgow, Ky. if shipped in combination. Terms: Spring Sales—Net August 1, 1911, subject to Discount for Cash, of 7% May 1st or 6% June 1st, 1911. Fall Sales—Net Jan. 1, 1912, subject to Discount for Cash of 7% Oct. 1st, or 5% Nov. 1st, 1911. Repairs—25% from Printed Lists, subject to regular Cash Discounts. Full settlement to be made by Cash or Note not later than June 1st for Spring Sales, or November 1st for Fall Sales, as per terms above 5 Fert. 6 x 8 Sqe. Disc. & G. S. A. F. F. C. F. W.W. t Horse Hitch \$61.50, 2/1/11. 4 Frt. One Rev Dis & Com. Drill B.C. \$10.50. Order entered Dec. 3, 1910. C. M. Haworth. Quantity Rebate—Two horse and larger wheat drills. If second party sells and settles in cash or his purchaser's note in accordance with contract rebate will be allowed at time of settlement as follows: 5 to 9 inclusive two horse and larger wheat drills \$.50 each; 10 to 14 inclusive, two horse and larger wheat drills \$1.00 each; 15 to 19 inclusive, two horse and larger wheat drills \$1.50 each; 20 or more two horse and larger wheat drills \$2.00 each. No rebate allowed on drills not settled for in cash or farmers' notes. Different classes of machines can not be combined to obtain rebate. The American Seeding Machine Co. Incorporated, Richmond, Ind. U. S. A.

J. A. CARR, having been called as a witness on behalf of the Plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Your name is James A. Carr?

A. Yes, sir.

Q. You have been sworn as a witness?

A. I have, sir.

Q. Where do you live, Mr. Carr?

A. Richmond, Indiana.

Q. What official connection, if any, have you with the American Seeding Machine Company?

A. I am President of the Company.

Q. How long have you been President?

A. Since December, 12th, 1911.

141 Q. Who was President before you?

A. Mr. A. L. Bookwalter.

Q. Where did he live?

A. Springfield, Ohio.

Q. What connection did you have with the American Seeding Machine Company, prior to your election as president?

A. Vice President.

Q. For what length of time?

A. From the formation of the Company, in 1903.

Q. Where was the Company formed, in what State?

A. New Jersey.

Q. Was there any such Company as the American Seeding Machine Company prior to March, 1903?

A. No, sir.

Q. Who were the incorporators of that Company?

A. I couldn't answer that. I could give a portion of them. There — quite a number of them.

Q. For what purpose was it incorporated?

A. The manufacture and sale of agricultural implements.

Q. What was the Capital Stock of the Company, and how was it divided?

A. Seven Million, Five Hundred Thousand Dollars Preferred and Seven Million Five Hundred Thousand Common.

Q. When you speak of Preferred Stock; I wish you would explain that; perhaps some of us don't understand it?

A. It is preferred in the payment of dividends, and in case of dissolution, in the payment out of the assets of the Company, it is excepted.

Q. In other words, the Preferred Stock is in the nature of a mortgage upon the property, inferior to the creditors?

142 A. No, sir.

Q. Isn't it in the nature of a mortgage?

A. It is Preferred only so far as the profits of the business is concerned, over the Common stock.

Q. In other words, dividends on the Preferred stock must be paid before any dividend is paid on the Common stock?

A. Yes, sir.

Q. What rate of interest did the Preferred stock bear, dividends?

A. Seven per cent.

Q. There was no rate of dividend for the Common Stock?

A. No, sir.

Q. It was to be declared by the directors if the occasion arose?

A. Yes, sir.

Q. What was done with that preferred Stock?

A. It was conveyed over to the different stock holders.

Q. What stock holders?

A. The parties that had subscribed for the stock in the New Company.

Q. What did the new Company then do, after forming, after incorporating?

A. It continued to manufacture goods.

Q. As I understood you, it was never in existence before that time?

A. The New Company?

Q. What New Company; The New Jersey Company was
143 formed in March, 1903?

A. They continued to operate the plants.

Q. What plants.

A. The plants of the different companies they bought.

Q. When did they buy those plants?

A. They day of the incorporation; at the time of the incorporation.

Q. What plants were bought?

A. The Superior Drill Company's plants——

Q. Give the location of the different plants, please?

A. The Superior Drill Company, Springfield, Ohio. The Hoosier Drill Company, Richmond, Indiana. The Empire Drill Company, of Shortsville, New York. The Bickford & Huffman Company, of Marion, New York, and the Brennan Company, Southwestern Agricultural Works, Louisville, Kentucky.

Q. What had those various Companies been doing prior to this time?

A. Manufacturing implements?

Q. What character of implements?

A. Principally seeding Machines.

Q. They also manufactured drills?

A. That is a seeding machine.

Q. Give the name of each drill manufactured by each of those Company-s?

A. The Superior, by the Superior Drill Company. The Hoosier by the Hoosier Drill Company. The Empire by the Empire Drill Company. The Farmer's Favorite by the Bickford & Huffman Company. The Kentucky, by the Brennan Company, South-
144 western Agricultural works.

Q. How long after the establishment of this Company did it continue in existence?

A. To April first, 1906.

Q. Before that time, was the plants of any of those companies, or the location of any of those plants which were merged into, and became the American Seeding Machine Company changed?

A. No, sir.

Q. In 1906, what happened?

A. We formed a new Company, an Ohio corporation, and took over the assets of the old Company.

Q. What was the Capital Stock of the New Company?

A. Five Million Dollars of Common stock and Two Million and a half Dollars of Preferred stock, authorized.

Q. What dividend did the preferred bear?

A. Six per cent.

Q. The Common?

A. Nothing at all, only if it was declared.

Q. Is that Company still in existence?

A. It is.

Q. Did the New Company take in any other company other than the ones you have mentioned?

A. They bought in a small Company of Springfield, Ohio. In about 1905.

Q. What was the name of that Company?

A. The Evans Manufacturing Company.

Q. What machine did they manufacture?

A. Particularly the potatoe planters.

145 —. Did they manufacture any drill?

A. No, sir.

Q. Did any of the Companies which formed the American Seeding Machine Company manufacture the same character of drills or implements that this last company manufactured?

A. No, sir; not that I remember.

Q. When was there any change in the location of the plants of those Companies?

A. The moving of the plants, the machinery to the other places?

Q. Yes, sir.

A. The Empire Drill Company moved to Richmond, the business was moved to Richmond in the Summer of 1908. Rather in the Fall of 1908. The Kentucky was moved to Richmond in the Summer of 1908, May or June of 1908.

Q. Are those the only changes made?

A. The Bickford & Huffman plant was moved to Springfield in the Fall of 1908.

Q. After those changes were made, the Empire, Hoosier and Kentucky were manufactured at Richmond?

A. Yes, sir.

Q. The Superior, Buckeye, and Farmer's Favorite at Springfield, Ohio?

A. The Buckeye and Superior were made in the same plant however.

Q. Sir?

A. The Buckeye and Superior were made in the same plant.

146 Q. Were there any other of the machines made in Springfield besides the Superior, Buckeye, and Farmer's Favorite?

A. No, sir.

Q. When was the plant moved from Kentucky?

A. I think in May or June of 1908.

Q. What became of the Office force?

A. It was all moved to Richmond.

Q. All of the office force?

A. As I remember.

Q. What became of the Manager?

A. Mr. Munn, he remained with us a while, and then he engaged in other business.

Q. What became of the Office force of the Empire Drill Company?

A. It was removed to Richmond.

Q. Richmond?

A. Yes, sir.

Q. The Farmer's Favorite?

A. To Springfield.

Q. You have two plants, one at Richmond and one at Springfield?

A. Have two at Springfield.

Q. You operate three plants, where you heretofore, or there were heretofore six plants operated?

A. Yes, sir.

Q. Is there any saving in that?

A. It is in some respects some saving; in others it has been the contrary.

Q. Do you know how many men the Kentucky Drill Company had in its employe as traveling agents?

147 A. The Kentucky Drill Company, after the merger?

Q. No, sir; before?

A. No, sir; I couldn't tell you exactly.

Q. One man does in this state, so far as the traveling is concerned for the Empire, Hoosier, and Kentucky?

A. Yes, sir—Or no, sir.

Q. Which ones does Mr. Rogers represent?

A. The Empire, Hoosier, and Kentucky.

Q. For how many counties?

A. Probably half of the State.

Q. Who does for the other half?

A. Harris.

Q. Who does it for the Superior, Buckeye, and Farmer's Favorite?

A. Neilson.

Q. Harris, Neilson and Rogers do all of the work for those Companies as Traveling Agents?

A. No, sir.

Q. What others?

A. The Western part of Kentucky is Jobbed.

Q. Does that mean you have no traveling agents?

A. Yes, sir; and in addition, some parts of Kentucky is handled by mail.

Q. Has Neilson any part of Tennessee?

A. No, sir; I think not.

Q. Where are his head-quarters?

A. I think the main Office is in—Or he is more often in Louisville than any other place.

Q. Where are his office head-quarters, aren't they Nashville?

148 A. I am not so familiar with Mr. Neilson. My work has been with the Richmond plant.

Q. Who fixes the prices of those various machines?

A. The American Seeding Machine Company.

Q. Who, of the American Seeding Machine Company?

A. No one particular person; the Executive Committee.

Q. Who composes that?

A. Mr. Westcott, Mr. Buckwalter and myself.

Q. What position has Mr. Westcott?

A. Treasurer.

Q. Mr. Johnson.

A. He is Vice President.

Q. Is he a member of that Committee?

A. Yes, sir.

Q. The President, Vice President, Secretary, and Treasurer fix the prices?

A. Yes, sir.

Q. The prices are fixed the same for all machines of the same size?

A. Yes, sir.

Q. For all parts of the country?

A. Yes, sir; a big part of it; for all parts of the country.

Q. Where is there a different price fixed on the machines than that price that is fixed in Kentucky?

A. The Price in North Carolina, and South Carolina, Georgia Alabama, Mississippi, and the New England States. The southern portion of Virginia; all west of the Mississippi River have a higher price.

149 Q. All west of the Mississippi River?

A. Yes, sir.

Q. That price is fixed by the same Executive Committee?

A. Yes, sir.

Q. In what States does the American Seeding Machine Company do business, in all of the States of the Union?

A. Practically all of them.

Q. Do they do business outside of the United States?

A. Yes, sir.

Q. Where?

A. South America, Russia, Canada, Spain, Italy, and I couldn't probably name all of the Countries; but there is several of them.

Q. Who fixes the price for the machines in those various Countries, the same Executive Committee?

A. Yes, sir.

Q. How are those prices as compared with the prices here?

A. The same price we have here to sell to the jobbers; that is we sell them at the same price, plus the cost of boxing and freight to New York.

Q. And the farmer in Spain, Russia, South America, or Italy would receive, would have those same goods, receive those same goods from the jobber, so far as you are concerned, at the same price as the farmer in North or South Carolina, or the New England States, and other states west of the Mississippi River, plus the cost of boxing and shipping them to New York?

A. I don't understand the question?

150 Q. Read the question. (Stenographer read preceding question to witness.)

A. I don't understand it.

Q. The jobber, or agent in Italy, Russia, South America, or Spain would receive your goods at the same price that the jobber or agent in North Carolina, or the New England States, or the states west of the Mississippi River, plus the cost of boxing and the freight to New York?

A. I think if I understand your question correctly, they would. Our price to Foreign Countries is the same price we make to the jobbers in this country, that is on board the Factory at Springfield; and we add to that price the cost of boxing and the cost of freight to New York.

Q. What is the difference in the price of the machines for 1910, the 1911 contract in the States of North Carolina, and the State of Kentucky, an eight by eight disk drill?

A. Both 1910 and 1911?

Q. Between the 1911 contract in Kentucky, and the 1911 contract in North Carolina?

A. Two dollars.

Q. What did you charge for the drill in North Carolina?

— We charged two dollars more for the eight by eight than we do here.

Q. What did you sell the drill for in North Carolina?

A. For two dollars more.

Q. Well, how much is that?

A. I think it is—I am a little rusty on figures; I think it is \$69.50, delivered, freight paid to the transfer barns in North Carolina.

151 Q. The same price prevails everywhere in Kentucky, except or I mean in the United States—I withdraw the question.

A. Let me make myself a little plainer on the prices in North Carolina. The price is more in North Carolina because, we pay the freight or allow the freight to transfer points.

Q. What are the prices in Indiana?

A. The same as in Kentucky.

Q. For an eight by eight drill in Indiana delivered at Richmond, Indiana, in 1911, August 1911 it cost \$67.50?

A. Yes, sir.

Q. Delivered in Kentucky it cost \$67.50?

A. Allowance of freight yes, sir.

Q. The first question; you said North and South Carolina and the New England States, and what other points?

A. West of the Mississippi River.

Q. West of the Mississippi River?

A. Yes, sir; and East of the Missouri.

Q. When was the first increase made in the prices after this combination was formed?

A. For the year 1906. In April or May, 1905, the prices were decided on for the year of 1906.

Q. What was that increase?

A. One Dollar.

Q. When was the next increase made?

A. I believe I will have to refer to my memoranda.

Q. You have the right to do that, to refresh your recollection?

A. The first increase was made in 1905 for 1906, of one
152 dollar.

Q. On what was that increase?

A. It was on what we term plain drills, and fertilizer drills of all sizes.

Q. Let me see if I understand you, the increase of one dollar was made on a six by eight, an eight by eight, and a ten by eight?

A. Yes, sir.

Q. The same increase was made?

A. Yes, sir; up to a twelve.

Q. After the twelve, what was it?

A. We don't make the fertilizer larger than that.

Q. Upon what you made, there was an arbitrary raise or increase of one Dollar?

A. Yes, sir.

Q. Now the other increase?

A. For 1907 our prices were raised two dollars.

Q. That is upon the same make, the same character of raise that was made in 1906?

A. Yes, sir; for 1908 our prices was raised four dollars.

Q. On all of those machines?

A. Yes, sir.

Q. Anything further?

A. That is all I have here. No, sir; for 1911, the prices were raised one dollar. There are some little irregularities in these; they are not uniform. That is the general advance.

Q. How much was the total advance?

A. On the six by eight from \$52.00 in 1903 to \$61.50
153 in 1911. On the eight by eight from \$58.00 to \$65.00.

Q. There was an increase of Five Dollars on each machine?

A. It would make more than that.

Q. Seven Dollars on each machine?

A. Yes, sir.

Q. From 1903 up to 1911 there was an increase of seven dollars on each machine?

A. On the two horse drills; fertilizer drills. On the plain drill it was not so much. On the fertilizer drills it ranged from Five Dollars to Seven Dollars.

Q. What was it on the plain drill?

A. It was from Five to Seven Dollars.

Q. On the fertilizer drills what was it?

A. It was from Seven to Nine dollars.

Q. When were those raises made?

A. Haven't I given those before.

Q. All of those raises made at the same time?

A. No, they were changed at different periods along.

Q. The plain drill is made in different sizes?

A. Yes, sir.

Q. The same raise was made on every size?

A. No, sir.

Q. Give the sizes and the differences in the raise?

A. We make from forty to forty five different machines.

Q. You make a six by eight plain drill?

A. No, sir.

Q. An eight by eight?

A. Yes, sir.

Q. What was the raise on it?

154 A. The raise on it was Five Dollars.

Q. On the ten by eight?

A. The same.

Q. The ten by seven?

A. The same.

Q. The ten by six?

A. The same.

Q. Upon all of the plain drills made upon that character, or upon those four rather, it was the same?

A. Yes, sir; but when you *to* in the twelve sizes then different conditions come in, and the raise was more, we make them up to twenty four.

Q. How much was that?

A. Seven Dollars.

Q. Is there any difference in the size between an eight by eight and a ten by eight?

A. Yes, sir.

Q. What is the difference?

A. A ten by eight has ten furrow openers, and an eight by eight has eight furrow openers. There is twenty per cent more in the ten by eight than there is in the eight by eight.

Q. Do you make any plain one row corn drills?

A. Yes, sir.

Q. Was there any increase in the price of it?

A. No, sir.

Q. Was there any increase in the plain shoe one row corn drill?

A. No, sir.

155 Q. Or the disk?

A. No, sir.

Q. No difference?

A. No, sir.

Q. Was there any difference in the price of the shoe drill, any change?

A. The shoe wheat drill?

Q. Yes, sir.

A. It follows out the same; all the same the disk and the shoe just the same changes took place.

Q. Was there any change in the price of disk harrows?

A. I couldn't answer that?

A. Any change in the price of the shoe press drill?

A. Yes, sir.

Q. What change there?

A. About the same proportion that there was on the drills. You asked me on the change in drills; but you haven't asked me what kind of furrow openers. You haven't said disk drill, shoe drill or what: I have covered all of that I believe in my previous answer.

Q. I understood you to say that those same raises was made on all of them?

A. Yes, sir; but you haven't indicated the furrow opener. There is an eight by eight disk; an eight by eight shoe drill, and an eight by eight press drill. I have covered all of that in one answer.

Q. Was there any change in the land rollers?

A. We don't make them.

Q. Any change in the potatoe planters?

156 A. Yes, sir; some advance.

Q. That was the plant you took over last?

A. Yes, sir.

Q. What was the change made in that?

A. I couldn't answer that. About two dollars.

Q. When was that made?

A. 1908, after we took them over.

Q. Was the output of your manufacture increased after the formation of this combination?

A. No, sir; not for the first year or two. In the latter years it was.

Q. When did you begin to increase?

A. After we got our plants—Well the increase probably came in, I think the principal increase was in 1908; but we had some increase before that.

Q. About how many of those various character- of drills did you sell on the market in the year 1908 or 1909, can you give me an idea or an estimate?

A. I will be glad to give you the exact figures.

Q. I will be glad to get them.

A. I am sorry, but I can't do it. I can give it to you approximately, in 1911, the total sale of wheat drills was about Fifty Seven Thousand.

Q. That included the various kinds of drills?

A. Two horse and larger size wheat drills.

Q. There are other character of drills?

A. Well, it included everything except one horse drills.

Q. What about those poatoe planters?

A. We sold a very small number; about five hundred.

Q. That included all the drills sold everywhere?

157 Q. Yes, sir.

Q. Disk, Shoe and all?

A. Yes, sir; all wheat drills.

Q. What other kind of drills do you make?

A. Corn drills; and five hoe drills, one horse drills.

Q. Was there any increase in the price of those machines?

A. Yes, sir.

Q. What increase was there in the price of those machines?

A. The corn planter has increased Five Dollars.

Q. Over the price it was before the combination?

A. Yes, sir.

Q. How many corn planters did you sell per year, say for 1908, 1909, and 1910, approximately?

A. About three thousand each year.

Q. What is the next drill you had an increase in the price on?

A. The five hoe plain drill, increased in price one dollar.

Q. How many did you sell in the period mentioned?

A. It would be hard to estimate. It is a machine that one year we sell a number of, and another year we sell three times as many as we did. I would say about two thousand.

Q. Next?

A. I believe that is all I have any notice of any changes.

Q. Has the capacity of the plant been increased to any material extent, either at Richmond or Springfield?

A. Yes, sir.

Q. To what extent?

A. In comparison to what it was in 1903, I would say our
158 Springfield plant is two and a half times its size. Two hundred and fifty per cent.

Q. The Richmond plant?

A. Three times.

Q. Has there been any increase in the efficiency of the machines used to manufacture those various machines?

A. Some. Any increase in—

Q. Any increase in the efficiency of the labor?

A. No, sir.

Q. The labor is about the same?

A. No, sir; it is less efficient.

Q. The machinery is more efficient?

A. Yes, sir; and the labor less efficient.

Q. The fact is, that the machinery now does the work that the labor had to do formerly?

A. There is very little machinery we have now that we didn't have in 1902 and 1903.

Q. Is that true, or not?

A. No, not as a general proposition; there is some exceptions to it.

Q. To what extent are those exceptions?

A. Well to a very small extent; I couldn't give you the exact figures.

Q. If the capacity has increased two hundred and fifty per cent, at Springfield, has the output increased in proportion?

A. Yes, sir.

Q. How much has the output increased at Richmond, Indiana?

A. About three times; about three hundred per cent the
159 output.

Q. Two hundred and fifty per cent you mean over and above the business done by the Companies which formed this Company?

A. No, sir.

Q. How much increase in Springfield, Ohio, over the out put of those companies before the combination?

A. Possibly fifty per cent.

Q. What has been the increase in the output at Richmond, Indiana?

A. About the same.

Q. About fifty per cent?

A. Yes, sir; over the combined output of the three companies.

Q. Is it not true, Mr. Carr, that the greater the number of machines you manufacture, the less the cost of the individual machine?

A. It would be—No it is not, as a general proposition.

Q. Well, I will put the question this way, does the increase in the cost of the machine the manufacture of the machine increase in proportion to the increased out put?

A. I guess I will have to answer the question peculiarly. Whenever we can build one thousand machines, or two thousand machines, we can make them cheaper; but our variety has increased enormously, so we are still making the machines; still in small quantities at a time.

Q. Are you making them in larger quantities than you were before the combination?

A. No, sir.

160 Q. If the output has increased fifty per cent, hasn't there been an increase in the number of machines?

A. The varieties have increased.

Q. I am speaking of the machines you owned when you went into the combination; you are manufacturing them now?

A. Yes, sir.

Q. You are making more of those character of machines, isn't there certainly an increase in the output of those machines?

A. Yes, sir.

Q. If there is an increase in the output, does it cause the individual machine to cost more or less?

A. If we could make a few kinds and sizes, the machines could be manufactured cheaper, as a general proposition. The larger the quantity, causes a reduction in the cost.

Q. I will endeavor to make myself clear—

A. We make probably forty five different styles or forty five times as many styles and sizes of machines as we did.

Q. Let us take the eight by eight, that is a rather popular size?

A. Fairly so.

Q. Take the eight by eight Empire, do you manufacture more or less eight by eight Empire Disk drills?

A. Less.

Q. What about the Superior?

A. Fewer.

Q. What about the Hoosier?

A. Fewer.

Q. What about the Buckeye, I believe it is?

161 A. Fewer.

Q. The Farmer's Favorite?

A. Fewer.

Q. What about the six by eight?

A. Fewer.

Q. What about the ten by eight?

A. More of them.

Q. How many more ten by eight Superior Disk Drills and Kentucky ten by eight Drills do you make now than you did or was made before the combination?

A. Ten by seven—Ten by eight is not a popular machine. I mean it is, it has taken the place of the eight by eight. We are making more of that size and more twelve by seven. Ten years ago, they didn't make any; now they are making more of them; everything is going to the larger sizes. The twenty by seven is a machine, which is not known in this territory, because it couldn't be gotten along the road. It is a popular machine in the North-west. It is one hundred and forty inches long.

Q. In this territory you sell more eight by eight than you did.

A. The six by eight; they are coming to the smaller machines.

Q. You make then more six by eight for this territory than you did before the combination?

A. Possibly for this one territory. But the orders have gone down on the whole territory.

162 Cross-examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. You were speaking of the different sizes and styles of drills, when you say an eight by eight Superior disk drill, does that completely describe that line?

A. We always add, plain, meaning without fertilizer and seeding attachment; and fertilizer, meaning with the fertilizer attachment.

Q. You make an eight by eight disk drill with fertilizer and grass seeder attachment, and that would go to any part of the World, you don't make any different styles of that machine?

A. Not exactly. We make forty or fifty different attachments that go on that machine. The one that goes to Texas has to have an attachment for sowing rust proof oats. The Kansas machine has to have stoppers. And the one that goes to Portland has to have something to reduce the quantity of seed. Some of them are made with all wood wheels; and some with steel. There are various attachments; some with and some without the grass seeder attachment. Without it in the West and with it in the East. There are combinations of various kinds; with and without the seat. Some with the standing foot board. I couldn't, without referring to the list, describe the numerous attachments that would go with that eight hoe drill. There is the four and six sizes, and the four eight, and the ten sizes, the eight by eight and all are subject to thirty or forty attachments.

Q. So when you say an eighty by eight disk Superior drill
163 with fertilizer attachment, you don't know exactly what it
is?

A. Not unless a man is familiar with the drill that is shipped. Now a man would guess at the balance, knowing what kind of drill was shipped to Glasgow.

Q. I wish you would explain to the jury why it is that the manufacture of quantities of the same kind of drill decreases the cost of manufacture, but the manufacture of quantities, if the increase results in different kinds does not decrease the cost of manufacture.

A. If we make one thousand drills; if we give an order for one thousand drills in the factory, we go to the lumber yards and bring lumber for the one thousand drills; bring in one thousand tongues; and bring in the parts for all of those machines, that one thousand machines, and the machines are set for those one thousand machines. If it is for twenty five machines, it takes the same time to set those machines; to set up the planer to bevel those one thousand machines. Say it takes twenty minutes to operate it in making twenty five machines; it takes an hour to set up the planer, and twenty five minutes after the machine is set up. And that follows through all of the departments. Particularly in the forging department. In the Hoosier drill the frames have thirty or forty holes drilled in them. Those holes are all punched at the one operation, and we make a great saving when making one thousand machines, and a loss if it is twenty five machines. That punch cost

164 Ten Thousand Dollars, and it is worked at a loss to set it up just to build twenty five machines. While we do it quicker, it takes two or three hours to set up that punch. And we more than make it back if it is one thousand machines, and we loose if it is for twenty five or fifty machines. I couldn't tell definitely where we cross the line from loss to profit, or from profit to loss. Probably one hundred. It is the same way with the foundry, the casting and making of those parts; through the whole thing every department. I believe that is about as well as I can illustrate it.

Q. Which size machine do you make the least of?

A. The six by eight.

Q. Why is that?

A. It is a machine that seems to be popular for small wheat raisers, and in rough countries. It is growing less and less all of the time. This seems to be a place where it is holding its own; in other localities it is going to the eight by eight.

Q. In what quantities do you handle that in the factory?

A. I think we make them in about one hundred now. We used to make them in two hundred quantities, and we cut it to one hundred. Whenever our stock begins to get depleted, and we find it necessary, we make a hundred of them.

Q. Is it a profitable drill for you to manufacture?

A. No, sir.

Q. Why do you make it?

A. We have to make it on account of the demand for it; it is such that if we didn't make that size we would loose our
165 trade on the other sizes.

Q. You make it to stand in with the trade?

A. Yes, sir; if we didn't make that size, they would buy the other

sizes where they buy that, the sizes in which there is a profit. It is considered one of the least profitable sizes we make.

Q. Do you sell the six by eight in Ohio and Indiana?

A. I don't believe we ever sell one of them.

Q. You have said that you furnish the eight by eight to the citizens of Barren County, Kentucky, at least his dealer, just as cheaply as you do in Ohio?

A. Yes, sir.

Q. You also said you did it as cheaply as you did at Richmond, Indiana?

A. Yes, sir.

Q. That also the case in Ohio?

A. Yes, sir; we even go further than that, and sell them as cheap as we do to the dealer in Richmond, Indiana.

Q. That is because you have certain zones within which your Company will stand the freight charges?

A. We couldn't possibly make prices to every locality. That would split it up in nickles and pennies. It was originally brought about because we had five factories in New York we had to adopt it, or there would be a difference in the prices to those places.

Q. Mr. Carr, you spoke of prices; what was the first act of the American Seeding Machine Company, after forming in March, 1903, in regard to prices?

A. I think it was probably sixty days afterwards, before
166 we got to the price question. We gave it no particular consideration, because the contracts were all made for 1903.

Q. When were they made?

A. During the Fall or Winter of 1902 and 1903 by the old Companies. No contract is ever made, or very seldom made after March, for the year 1903. The first price meeting we had to thoroughly consider the matters was probably in the Midsummer of 1903. At which time we compared the prices of the different companies. We didn't adopt our price until the year following. We carried out the old prices for the year 1903.

Q. What did you do when you compared the prices of the old companies; what action did the new Company take about the prices?

A. They harmonized the prices; made them the same on all machines.

Q. In doing that, how did they bring about that harmony?

A. We raised the price of no machine; and reduced the prices of the higher ones. May I refer to a memorandum in connection with that matter.

Mr. CARROLL: Did you make the memoranda?

WITNESS: Yes, sir.

Mr. CARROLL: You have the right to refer to it then.

A. (Con.) In April, 1904, the last of the year—I beg your pardon, in June, 1903, we formulated our prices for 1904. We commenced to sell goods in August and July for the year following.

The prices were formulated in June or July, 1903 for the
167 1904 season. The Hoosier Drill prices were adopted as they were exactly; no change was made. The Superior Drill

Company's prices were adopted as they were for Indiana and Ohio, but they had gotten two dollars more for Kentucky and Tennessee, because it was a little further, and that was removed; and consequently their price was reduced for Kentucky and Tennessee. And looking at it another way there was no change made in Ohio and Indiana. For Kentucky and Tennessee the price was reduced and made the same. The Empire division price was reduced four Dollars and a half. The Bickford & Huffman, I don't believe had sold ten drills in Kentucky. They may have done so; but I don't believe they did. Their prices was reduced too six dollars for Kentucky and Tennessee. I don't think that amounted to anything, because they hadn't sold any. If there was any sold after that, it was Six Dollars less than what they had been selling them for.

Q. What justification was there for making these prices uniform, in regard to these goods?

A. We couldn't feel satisfied to set our stamp on one machine and say it was better than the other and therefore we thought we would put the prices on them the same, and then let them do the talking. The necessity was apparant we thought, that the prices be uniform.

Q. As a matter of fact is there any material difference in the cost of the production of the different machines?

A. Not if manufactured under the same or similar conditions. There was considerable difference in the *in the* cost of the manufacture of them under the old conditions. I think the

168 Empire Drill Company's drills were costing them much more to manufacture them; because they were manufactured in a very crude way. And the Bickford & Huffman was the same way. It was located two miles from the railroad, and therefore was not conducive to manufacturing them cheaply. They had to haul all of their material to the plant and haul the product back.

Q. Did the Combine company prove able to do and conduct a profitable business at those prices, as they were in 1904?

A. No, sir.

Q. The price was raised one dollar——

A. In 1906.

Q. You raised it at that time one dollar on the six by eight and one dollar on the eight by eight?

A. Yes, sir; one dollar on everything; even up to the twenty four and over.

Q. The difference between the six by eight and the eight by eight, in the cost of the article is not entirely proportionate or in proportion to the entire number — hoes?

A. No, sir.

Q. The wheels and hubs and so forth are the same?

A. Yes, sir.

Q. The wheels are just the same or as heavy in the six by eight as in the eight by eight?

A. Yes, sir.

169 Q. Did this American Seeding Machine Company, formed in 1903 acquire the power to control the prices of grain drills?

A. We think not; I am very sure we didn't.

Q. To what extent did you have competition?

A. Well, we had twenty three or twenty four plants, or Companies manufacturing grain drills.

Q. All located in the United States?

A. Yes, sir.

Q. How many of them located East of the Mississippi River?

A. Probably eighteen of them.

Q. They were all prepared to furnish drills in any part of the United States?

A. Yes, sir.

Q. Did they have the manufacturing facilities to make all of the drills that would be used in the United States?

A. Yes, sir.

Q. And were all seeking business?

A. Yes, sir.

Q. Throughout the United States?

A. Yes, sir.

Q. Did any other men or any of the men connected with this Combination so far as you know, or yourself, entertain a purpose of obtaining more for your goods than they were really worth?

Mr. CARROLL: We object to that.

The COURT: Overrule the objection.

Mr. CARROLL: We except.

A. No, sir.

1696 Q. What were the reasons which moved to the raises in prices to which you have referred?

A. To keep from going into the hands of a receiver or becoming bankrupt.

Q. What justification, if any, occurred for those raises in the changes in the structure of the articles?

A. We made very radical changes in all of our drills, that is in the construction. Take the Empire drill particularly. We have changed its construction throughout. The Empire drill as made in 1903, 1904, and 1905, when we commenced working on it, in 1904, 1905, and 1906 weighed 745 pounds. We have been changing its construction, and changed it two or three times, so that the machines are entirely dissimilar. Not in any way alike. The present machine weighs 858 pounds; or 113 pounds more in 1911 than it weighed in 1903. These changes consisted of higher and different ground wheels. They were principally wood and some steel; the new has all steel, and cold roller action. Has a larger opening. Different grain feed; different fertilizer feed. I believe there is hardly anything connected with the machine that is the same as it was in 1903.

Q. Are you able to state the difference in the direct manufacturing cost of the Empire Junior as you now build it, and the direct manufacturing cost of the old Empire as it was made in 1903?

A. Yes, sir.

Q. What is it.

A. \$9.23.

169c Q. How do you arrive at that?

A. By taking each item of material that composes the whole drill, and taking the cost of the whole drill, that is, the direct labor, and figure the cost of the old machine and the new machine; and everything connected with it at that time.

Q. By direct labor and materials entering into the machine just what do you mean, state to the jury?

A. By that we mean, we have a list of all materials contained in each size machine; how many bolts; how many pieces of bar steel; how much lumber; even down to the tacks that it takes; and we take that and take the cost of the direct material, and we figure it, of course we figure it by the hundred, as it is easier. By direct labor is the labor of operating the machinery; such as the moulding the parts of the machine, turning the axle planing the articles; assembling the machine; painting it; riveting the castings. The indirect labor is the stuff we can figure exactly; coming down to small items, we have got to figure that only approximately.

Q. What other labor is there, such as that general labor?

A. There are different ways of treating that. Our method of treating it is to treat everything like that; the engineer; the fireman; the watchmen; the oilers; the truckers and the loading and shippers; and everybody who has anything to do with the article that doesn't produce or work on the article, we call that indirect labor. Some parties might call some of them burdens, such as our steam coal; our oil, our fuels; insurance, and things of the nature

170 of supplies.

Q. The direct labor is that which goes directly into this particular article?

A. Something you can go and put your finger —; and it cost so much. The riveting of those castings, so much; welding that tire so much; putting the rims on the wheels so much. That is direct labor; that which you can put your finger on and tell what the item, each item cost.

Q. That, with the material has cost——

A. \$9.28 more.

Q. What is the fact in that regard in regard to the Superior Drill?

A. The Superior drill has increased \$5.61.

Q. There has not been so radical a change in the construction of that?

A. No, sir.

Q. What have been the changes in the Superior?

A. The important changes have been the increased diameter of the ground wheels; a change in the fertilizer feed, and an enlargement of the axle or bore and other things. I believe I know I can't go into any great enumeration of the changes in the Superior. The diameter of the ground wheel; increase in it, and the size of the axle, there are the material changes.

Q. Do you remember what the increase was on that diameter of the wheel?

A. From forty two to forty eight inches. The increase was a very material one.

Q. That necessarily increased the length of the feed tubes that carry the grain?

171 A. Yes, sir; the tubes and the draw bars and numerous changes of importance become necessary. I believe any farmer would appreciate the large wheels, and I know the wheels are more satisfactory. Our competitors were using the larger wheels and we had to do the same.

Q. What was the condition in regard to this change, the cost of the construction of the Hoosier line?

A. Very similar to that of the Superior. A trifle more, the increased cost there was about \$5.90. That was due, not to the difference in the diameter of the ground wheels but to the difference in the width of the tires. And the change in the fertilizer feed, and a change in the style of the frame. And the increase in the weight of the Hoosier drill was thirty pounds; twenty eight to be exact.

Q. Before this, the diameter of the Superior was less than the diameter of the Hoosier?

A. Yes, sir.

Q. And less than the Empire?

A. Yes, sir. The uniformity of prices necessarily brought the uniformity of construction. One had a three inch wide tire and a forty eight inch wheel. The dealers would write about the defect, and wouldn't like the Hoosier because it had a two and a half inch tire, and they would forget the fact that it was a forty eight inch ground wheel. They could call our attention to the defects, but wouldn't give us credit for the good features. The result was that

172 we had to bring everything to the highest standard. The first thing we had to bring the Superior to a fortyeight inch ground wheel and a three inch tire. Second we had to bring the Hoosier to a three inch tire. The Empire was a forty five inch, and we had to bring that to a forty eight. And the Empire wheel was very light, and very poorly made. It was used on a stub axle, and I think we increased the hub fifteen pounds. The weight over what the hubs were formerly.

Q. Did these improvements and changes in the construction better this drill for the farmer?

A. Without any question. He can do a larger variety of work with the machine than he could; he can do with the machine now days things that wasn't demanded of it then, but which are now demanded, and are now important.

Q. In the manufacture of grain drills, what expense is involved in keeping up an experimental department, to develop and devise gradual improvements and create improvements?

A. That is a matter also, with us of expense, and very great importance. Our expenses last year for the year were \$140,000 or \$138,000.

Q. How many men do you keep there?

A. Thirty five or forty men.

Q. How do the improvements originate?

A. In nearly all cases, with the demand of the farmer to do this thing or that.

Q. What becomes of the request; what is done with it?

A. It comes to the factory. It is handled very largely by the executive department. Very largely by myself first, and then is referred to our travelers, and they go out and advise us as to 173 what the conditions are. There are peculiar soils and conditions in the different territories, and they determine whether it is a necessity or would be a good thing. And find out if the same thing would be required in other countries. And then we make up our mind whether there is sufficient demand to justify it, and if there is we make the change; and if there is not, we don't. If it is a whim of a certain locality.

Q. How many men did you say you employ in that line?

A. From thirty to forty men.

Q. What doing?

A. Working out the new propositions and sending them out to investigate personally. It is very easy to suggest a change, but it is sometimes a very difficult thing to make the change. Now and then we send these men out. Sometimes there are large orders for repairs in certain countries from the Jobbers, especially in South Carolina, at times; and if it is a very urgent case, we send them a man to that locality to investigate the conditions.

Q. You spoke of the extent of competition your Company had in 1903, when you formed. What was the conditions in that regard in 1911?

A. The competition was—we think, more severe in 1911 than it was in 1903.

Q. Is the competition with each line the same in all parts of the United States, or do they all have different localities in which they are more firmly lodged?

A. It varies in localities. We are probably second or third in the northwestern territory. We have two competitors who are 174 out-selling us in that territory.

Q. Notwithstanding that fact, your prices are absolutely uniform in all portions of the United States?

A. So far as we are concerned. Of course the selling prices are different.

Q. There are two methods referred to of handling and selling of the product; the selling direct to jobbers, and selling through dealers, which of those methods does the American Seeding Machine Company follow?

A. Both.

Q. Why is it the Company—— Is that common with manufacturers to follow both?

A. Yes, sir. It depends on the size of the Company and the amount of capital they have. We sell our goods direct to the dealer in all sections East of here and the Mississippi River, and running down in the Western or I mean eastern part of Kentucky, and take in a portion of Kentucky. We sell to the jobbers in the Western part of Tennessee. You go out in this Western section and the

demand is very large and it is too far removed from the dealer, and consequently they buy wagons, buggies, and plows and drills and everything they get, and get them in car load lots, and it makes it impossible for a little single line Company to successfully operate in a territory like the Dakotas and Oregon, Nebraska and Kansas.

Q. There you have to use the jobbing method?

A. Yes, sir.

Q. The jobber furnishes the capital and runs the risk of
175 transacting the business with the dealer?

A. Yes, sir.

Q. He pays your Company and stands the loss, if any, occurring, and pays you in one year's time?

A. Yes, sir; the time is one—— The time is shorter, and we put, as the saying is, more eggs in one basket. The jobber often owes us, and the jobbing firm pays us in larger sums; some orders are One Million Dollars. It is a great question; some people say you take more and greater risk.

Q. This Foreign trade, I suppose is all done on the jobbing business?

A. Yes, sir.

Q. You don't sell direct to the dealers abroad?

A. We sell it cash with the Bill of Lading attached delivered in New York. Some of them are paid cash by New York jobbers. Some sell direct to the dealers, and take a little greater risk I think.

Q. How long is your money tied up in the business in this thing as a rule?

A. About eighteen months from the time we buy our lumber and raw material. We may realize it sooner; some estimate it two years; but I believe we get our money in about eighteen months. Some we get in thirty days; and some three years.

Q. You have spoken of the increased cost of direct production of these goods, have you in that computation figured also the difference in the prices of material and labor and things of that kind?

176 A. Yes, sir.

Q. By what have you fixed those differences in prices?

A. Well, I have bought practically all of our material. I bought it all for the Hoosier Drill Company before the combination, and I have bought it all afterwards for several years, I think. By consulting the records and checks in different ways.

Q. What has been the history of the price of lumber during the last nine years.

A. We use the first grade of Cotton Wood lumber, and I take the average price of the Cottonwood lumber for 1903. We take the year previous to 1903, and figure the price of the lumber, we have to take the prices for 1902. We buy all of our lumber and put it on a stack from twelve to eighteen months before the goods are marketed. The average price of Cottonwood was \$26.00, and the average price in 1911 was \$38.00. We have paid in less than thirty days, \$42.00 for the same grade of lumber.

Q. In what proportion?

A. Well, the lumber is thirty per cent of our graind drills. Some drills don't use any wood.

Q. What about the other materials?

A. You take the yellow pine pole stock, we paid \$20.00 in 1903, and 1902, for the year of 1903, and in 1910 we paid \$38.00. And pay \$40.00 to-day. And there was equally as much advance in hickory; we used to be able to buy hickory in a local way at each of the plants, and in New York State, and Springfield, and Richmond, and each of the plants, and the Oak, we used to be able to
177 buy it in a local way. We have bought hickory for \$22.00 and we pay \$35.00 for it now.

Mr. CARROLL: We move to exclude from the consideration of the jury all testimony concerning the prices subsequent to the 16th of November, 1911.

The COURT: I sustain the objection, and tell the jury not to regard any evidence as to the prices of material since the 16th day of November, 1911.

Q. How was it ending at that time?

A. Cotton wood was \$26.00 and \$38.00; p-le stock was \$28.00 and \$38.00. Hickory \$22.00 and \$35.00. Maple from \$20.00 to \$30.00. Wheel stock, chair stock for the rims was 24¢ against 36¢ against 48¢ for the four inch rims.

Q. I don't mean to have you give a detailed cost of the stock that goes into them; but the cost to you of the material in a general way.

A. The percent of cost.

Q. Or the difference in prices—— You buy your wheel stock and rims?

A. Yes, sir.

Q. You had to pay more for them?

A. About three times as much as we did ten years ago, in 1903.

Q. Did that occur in 1911?

A. Yes, sir; probably not quite so much in 1911. The greatest advance on rim stock that I remember was in the rim stock,
178 in 1903 it ranged from 18¢ per rim, as against 36¢ per rim up to the width; owing to the width of the tire used, two and a half; three and three and a half, four and four and a half; the different size wheels. The material cost over one hundred per cent more on the rims, I suppose.

Q. The labor cost you have referred to, the direct labor what has been the history of that; the cost of labor?

A. Our labor cost per year has increased thirty per cent on an average, or more. Well our labor, that is piece work labor has increased; well the labor has increased about twenty eight per cent, and the piece work labor about thirty two per cent.

Q. What proportion is the piece work of the total labor?

A. Thirty five or forty per cent in our factory, or foundry. We have made three distinct increases between 1903 and 1911. We made one raise, the increase of five per cent in 1907. Another increase of ten per cent. It was, I think the first increase was prob-

ably in 1905. That is a real increase of thirty per cent in the last nine years, up to and including 1909—1911 I mean.

Q. In the foundry?

A. Yes, sir; and the other piece work has been about the same. But the foundry, our piece work is about forty per cent of our entire work, and our foundry is about seventy five per cent of the forty per cent.

Q. What about the prices of irons and material, do you own your own foundry, what do you make there?

A. We make our castings. We buy our pig iron.

179 Q. Do you buy your mal-able castings?

A. No, sir.

Q. Which is more expensive, mal-able or gray iron?

A. Mal-able.

Q. Is the kind you make, and the gray, higher?

A. Yes, sir.

Q. The Mal-able more expensive?

A. Yes, sir.

Q. You have to buy that?

A. Yes, sir. We have increased the number of our mal-ables very greatly on all of the machines. We are using, I would say we are using double the quantity of mal-ables on the machines that they did ten years ago. We use a great many more pressed steel parts.

Q. What effect do these changes you have made have upon the durability of the machine?

A. It is much more durable.

Q. How long will a machine last?

A. From ten years to fifty years. We have machines in use that have been in use since 1860, '67, '68 and '69. But those cases, of course, are unusual. A wheel drill ought to last one a lifetime.

Q. Is the machine such, if the required skill is used in working it, that it requires a skilled repairer to be in the field and look after it?

A. It depends on the skill of the man using it; there are some people who hardly know how to tighten up a nut, and sometimes we have to send a man to do that.

Q. How does it differ in that respect from the binder?

180 A. It is much simpler.

Q. Is the drill manufacturer burdened with any expensive experts?

A. Only when they make a bad construction.

Q. If a drill is carefully constructed?

A. Has very little expense in that direction.

Q. If it becomes more durable, is the result not to relieve the manufacturer of the expense of keeping it up, or is it to deprive him of the profit in selling repairs?

A. He would be relieved of the expense of keeping it up. But I don't believe he would gain very much in the selling of repairs? If he does, he loses it in the labors.

Q. In the drill business, there never is any burden about keeping up these drills, if they are properly and carefully constructed?

A. That hasn't been a feature in the trade at all, no, sir.

Q. Where is Captain Bookwalter?

A. In San Francisco.

Q. You were Vice President of the American Seeding Machine Company until you become President?

A. Yes, sir.

Q. What was your business before the American Seeding Machine Company was formed?

A. I was Manager, President, and Vice President, at different times of the Hoosier Drill Company.

Q. How long have you been engaged in the business of manufacturing drills?

A. Thirty five years.

181 Q. Has that been your only occupation?

A. Yes, sir.

Q. Were you a member of the Committee that valued the property?

A. Yes, sir. Chairman.

Q. How did the actual value of those properties received compare with the par value?

A. I thought it was very reasonable.

Q. Do you remember what proportion of them were receivables material, and stock?

A. I would rather not speak of that in a definite way. But I would say about sixty per cent were receivables, materials, manufactured goods. I think sixty to sixty five per cent. The balance was the plants.

Re-direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Carr, you spoke of standardizing the prices of your machines and at the same time standardizing the various parts of the different machines, and making the wheels all the same size in diameter, is that true?

A. Yes, sir; true in most cases.

Q. Now then, the same mould could be used to make those different wheels on all, or are they all made by the same process?

A. Yes, sir; the wood wheels could. And the steel wheels to a certain extent would.

Q. Q. If I understand you now, you sell a forty eight inch in circumference?

A. Yes, sir; in diameter.

182 Q. And three inches wide tire?

A. Yes, sir.

Q. That same wheel goes on the Superior, Hoosier and Kentucky?

A. Not the Superior.

Q. On each of those machines?

A. Yes, sir.

Q. Doesn't that result in a reduction of the expense?

A. So far as the labor is concerned, but not in the material.

Q. The Empire, as I understand you, its manufacturing establishment, because of its location, it was rather expensive place to do business, or one of them?

A. The Bickford & Huffman.

Q. It was a saving to a considerable extent by placing that manufacturing establishment to a more convenient and accessible point?

A. Yes, sir.

Q. What other machine Company; which Machine company was it two miles from the railroad?

A. The Bickford & Huffman.

Q. The Empire; or one of them you said its condition was very crude?

A. The Empire.

Q. That plant was dismantled?

A. Yes, sir.

Q. By taking it and placing it with the other plants at Richmond, that was a great saving of the expense that was attached to the manufacture of the Empire drills prior to that time, by reason of the crude machinery?

183 A. Yes, sir; I believe on the whole it was a saving.

Q. And there was a saving on the Bickford & Huffman?

A. Yes, sir; in the labor.

Q. There was a saving on those wheels which were made the same, by reason of the fact of making them all uniform?

A. The wheels were very much more expensive; the saving—

Q. The wheels were more expensive as compared to the old wheels, but you were able to make three wheels on the same plane or brand, where heretofore you had to have three different plants or brands?

A. So far as the labor was concerned, it was cheaper but so far as the material was concerned, it was not.

Q. Read the question. (Stenographer read question to witness.) Isn't that true?

A. Yes, sir.

Court here adjourned until 8:30 the following day, the — day of July, and met at said time pursuant to said adjournment, when the re-direct examination was continued, as follows:—

Q. Mr. Carr, what was the price in Kentucky of an eight by eight disk fertilizer drill with grass seeding attachment, Empire make, for the year 1903?

A. To the best of my knowledge \$64.50.

184 Q. What was it for 1904?

A. The same—No I beg your pardon, the Empire was \$60.00.

Q. For 1905?

A. The same.

Q. \$60.00?

A. Yes, sir.

Q. 1906?

A. \$60.00.

Q. 1907?

A. \$61.00.

Q. 1908?

A. I will have to refer to my memoranda—\$65.00.

Q. 1909?

A. \$65.00.

Q. 1910?

A. \$65.00.

Q. 1911?

A. -67.50.

Q. Now, did that same price apply to the six by eight for those various years?

A. No, sir; the same price?

Q. Yes, sir?

A. No, sir; they were cheaper?

Q. What was the price of a six by eight, for these years?

A. 1903?

Q. Was the same reduction made for 1903 in the six by eight; what was that for 1903?

A. \$56.50. Let me see, I haven't that. \$56.50.

Q. Are you certain about that?

185 A. I am certain about it, 1903; the price on the Empire line for the whole year.

Q. 1904?

A. \$55.00. (Changed by witness to read \$52.00.)

Q. 1905?

A. \$55.00. (Changed by witness to read \$52.00.)

Q. 1906?

A. \$52.00.

Q. 1907?

A. I am mistaken on this proposition; I will have you to go back and start at 1904?

Q. Start in 1903, what was it for 1903?

A. I think it was \$56.50.

Q. What was the price of the six by eight in 1903, when you took charge?

A. \$56.50. That was the supposed price; if there was any reductions, or special prices, I am not aware of it.

Q. 1904?

A. \$52.00.

Q. 1905?

A. \$52.00.

Q. 1906?

A. \$52.00.

Q. 1907?

A. \$53.00.

Q. 1908?

A. \$57.00.

Q. 1909?

A. \$57.00.

Q. 1910?

1856 A. \$57.00.

Q. 1911?

A. \$61.50.

Q. Wasn't it \$59.50?

A. \$61.50.

Q. Now what was the price on the ten by eight in 1903?

A. I will have to get some other memoranda, I haven't got it here.

Q. I will withdraw the question for the present. What was the price on the Hoosier for 1903, an eight by eight disk fertilizer drill with grass seeding attachment?

Q. \$58.00.

Q. That is the eight by eight, is it?

A. Yes, sir.

Q. 1904?

A. \$58.00.

Q. 1905?

A. \$58.00.

Q. 1906?

A. \$58.00.

Q. 1907?

A. \$59.00.

Q. 1908?

A. \$63.00.

Q. 1909?

A. \$63.00.

Q. 1910?

A. \$63.00.

Q. 1911?

186 A. \$65.00.

Q. Now on the six by eight; was there the same increase as in the eight by eight, in the price?

A. One dollar more on the six by eight.

Q. What was the six by eight in 1903?

A. \$52.00.

Q. What was it in 1911?

A. \$59.00.

Q. What was the price in Kentucky of the Kentucky drill, six by eight by eight, disk fertilizer drill with grass seeder attachment, in 1903?

A. Eight by eight?

Q. Yes, sir.

A. My understanding is it was \$58.00.

Q. 1904?

A. \$58.00.

Q. 1905?

A. \$58.00.

Q. 1906?

A. \$58.00.

Q. 1907?

A. \$59.00.

Q. 1908?

A. \$63.00.

Q. 1909?

A. \$63.00.

Q. 1910?

A. \$63.00.

Q. 1911?

A. \$65.00.

Q. Was there a panic in this country in 1907?

187 A. Yes, sir.

Q. Didn't that cause a reduction in prices?

A. For 1907?

Q. For 1908?

A. No, sir; not that called for a reduction in prices.

Q. Wasn't there any reduction in the price of raw steel and iron?

A. Yes, sir; for 1908. The panic come after the 1907 business was over.

Q. Was there a reduction not only in raw iron, but in iron and steel bars, do you call that raw?

A. For us, it would be raw, Judge, not for rolling mills.

Q. Reduction in pig iron?

A. Yes, sir.

Q. And continuing up until a few weeks ago?

A. No. It has been up and down since that time.

Q. It has been practically lower all of the time on an average?

A. Yes, sir.

Q. Both pig iron, Bessemer Steel, Bar iron and Bar steel?

A. Yes, sir; the average has been lower since the high prices of 1907.

Q. Wasn't the average lower between 1902, between 1903 and 1907, than it was in the years of 1901, 1902, and 1900?

A. I would say between 1902; a period of two or three years it was lower than the year 1902.

Q. Now then, coming back to the Superior drill; what was
188 the price of the Superior drill for 1903; the eight by eight?

A. How is that?

Q. Was what was the price in Kentucky of an eight by eight disk fertilizer drill with the grass seeder attachment in 1903, of the Superior, in Kentucky?

A. \$60.00, to the best of my knowledge.

Q. 1904?

A. \$61.00; No, in 1904, it was \$59.00; I beg your pardon I am getting into the wrong columns.

Q. When you want to make any corrections, call our attention to the fact?

A. I have got the 1904, please.

Q. 1904?

A. I have got it without the grass seeder.

Q. Read the question. (Question read to witness.)

A. \$60.00 in 1903.

Q. 1904?

A. \$58.00.

Q. 1905?

A. \$58.00.

Q. 1906?

A. \$58.00.

Q. 1907?

A. \$59.00.

Q. 1908?

A. \$63.00.

Q. 1909?

A. \$63.00.

Q. 1910?

A. \$63.00.

189 Q. 1911?

A. \$65.00.

Q. What was the price in Kentucky of the same make drill six by eight, with the same attachments, for 1903?

A. To best of my knowledge it was \$52.00.

Q. 1904?

A. \$50.00.

Q. 1905?

A. \$50.00.

Q. 1906?

A. \$50.00.

Q. 1907?

A. \$53.00.

Q. 1908?

A. \$57.00.

Q. 1909?

A. \$57.00.

Q. 1910?

A. \$57.00.

Q. 1911?

A. \$59.00.

Q. What was the price for Kentucky of an eight by eight disk drill with fertilizer attachment and grass seeder attachment, of the Buckeye make, for 1903?

A. We didn't have any of that machine at that time, I know nothing about it.

Q. What was it for 1904?

A. Didn't have it.

Q. 1905?

190 A. Didn't have it.

Q. 1906?

A. Didn't have it.

Q. 1907?

A. Didn't have it.

Q. 1908?

A. I don't think we had it.

Q. 1909?

A. Couldn't answer.

Q. 1909?

A. Couldn't answer?

Q. 1910?

A. Couldn't answer.

Q. 1911?

A. Couldn't answer.

Q. Why?

A. I don't believe they have been sold in Kentucky; at least I have no direct knowledge of the matter.

Q. What was the price of the farmer's Favorite in 1903 for the eight by eight disk drill with fertilizer attachment?

A. I am afraid I am getting confused in these prices. My list prices are without the grass seeder. I have to add to it; and I am afraid I failed to do it in some cases.

Q. If you want to make any corrections I would be glad if you would do it now.

A. I have the prices here without the grass seeder, and I am afraid I, in running through, have failed to add the grass seeder.

191 Mr. BOWMAN: Let the stenographer read to the witness his answers on this matter and let him correct them. (Stenographer read to witness such answers as he called for, and witness made such changes as he desired, which are shown as corrected, in the foregoing testimony.

Mr. BOWMAN: On the Empire six by eight, I thought there was a raise of one dollar straight through, you gave it as \$52.00 for 1904 and 1905?

WITNESS: Yes, sir.

Mr. BOWMAN: And then you jump to \$55.00?

WITNESS: Yes, sir.

Mr. BOWMAN: I thought there was a raise of one dollar straight through, that would be a raise of three dollars on that Empire six by eight.

WITNESS: Be a raise of three dollars.

Mr. BOWMAN: On the Empire, six by eight?

WITNESS: Yes, sir. I have got this confused in the prices of the grass seeder proposition. If you will please, I have got another memoranda here.

Mr. BOWMAN: Did it jump in 1910 from \$57.00 to \$61.50?

WITNESS: No; I didn't say \$57.00. I am confused in the — without grass seeder: If you will please go——

192 Mr. CARROLL: I suggest Mr. Bowman that you wait until I get through with the direct examination to cross examine the witness.

The COURT: Yes.

Mr. BOWMAN: I beg your Honor's pardon.

Q. Mr. Carr, you seem to be utterly at a loss to know what your prices were for those years?

A. No, sir.

Q. Why all of this confusion and suggestions and so forth?

A. I have got my prices figured without the grass seeder attachment; and I failed to make the proper additions, when I should have made it.

Q. What is the grass seeder attachment cost?

A. Two dollars for the first seven years, and Two dollars and a half for the last two years.

Q. What did you say the price of that machine, the six by eight Empire, Disk fertilizer with grass seeding attachment was in 1911; tell what that price was?

A. \$61.50.

Q. What was it in 1910? With the grass seeder attachment and a disk fertilizer drill?

A. It was — In 1910, it was \$59.00.

Q. \$59.00?

A. Yes, sir.

Q. What was it in 1909?

A. In 1909; it was \$59.00.

Q. What was it in 1908?

A. \$59.00.

193 Q. 1907?

A. \$53.00.

Q. With the grass seeder attachment?

A. With the grass seeder attachment.

Q. Then it jumped six dollars from 1907 to 1908, did it?

A. No, sir; did I give you \$59.00?

Q. Yes, sir; you gave us \$59.00.

A. It was \$55.00.

Q. Mr. Carr, please look over those figures you have, and if the Court will permit me, I will ask you to look over them, and I will ask the Court to suspend a minute to give the gentleman an opportunity to look over the figures, and get them straightened out?

A. It isn't that I have got them mixed.

Q. When you think you have gotten them straightened out let me know, and I will go over it again, and try and get this thing straightened out. Hav-n't you the plain price list for those years?

A. Only for the last year.

Q. How long have you been preparing for the trial of this case?

A. Probably about two weeks.

Q. Hasn't it been more than two weeks that an agreement was made that this case should be tried at this term of this Court?

A. I have been away from home.

Q. For the last two weeks you have been preparing for the trial of this case?

A. Yes, sir.

194 Q. You knew the prices of those machines would be a material item in the trial of this case?

A. Yes, sir.

Q. Couldn't you bring the price list formed by the combination, from the time of forming up to 1911?

A. No, sir; except the price list of 1911. We had the price book; but I didn't bring them because they were very voluminous.

Q. Haven't you a price list that you send to your traveling men?

A. I was unable to locate the copies of it.

Q. You mean to tell the Court and jury, that in a concern with a capital stock of Seven or Eight Million Dollars, that it doesn't keep a copy of the price lists sent the various agents?

A. We keep a copy in our original price books, the book is there; we destroy the sheets every six years.

Q. You destroy the book?

A. No; we have the price book from which the price sheets are made, but it is very large and voluminous.

Q. Did you have any difficulty in making that copy?

A. I thought I had made a copy; this is what I aimed, and supposed to have, of all the machines sold in Barren county.

Q. You have no price list with you except the price list for 1911?

A. I have the price list for 1903, of the Hoosier.

Q. You have no price list of any other machines?

195 A. No, sir.

Q. Nor between 1903 and 1911?

A. Nothing except this I made.

Q. You came from Richmond, Indiana to try this case without bringing papers which you knew to be important on the trial; go ahead and figure it out, and let us know when you are ready?

A. I am ready.

Q. Mr. Carr, there seems to be some misunderstanding as to what you said; haven't you a copy of those various price lists with you?

A. No, sir; I have the 1903 price; but not the intermediate.

Q. This memoranda you made is not a copy from your books?

A. Yes, sir.

Q. Will you file that copy?

A. It isn't in shape to file the way I have got it marked up.

Q. Have you been changing it?

A. No, I was trying to add the price of the grass seeder.

Q. That is what purports to be a copy, and it turns out not to be a correct copy?

A. No, sir, if—

Q. For those various years?

A. Yes, sir; it is a correct copy.

Q. Where is it?

A. I have got another copy.

Q. Get that will you, and let us see it?

196 A. Now are you ready?

Q. If you are?

A. I am ready.

Q. Just one moment, we will begin again. Take the Empire first; if you are going to read over the other questions, to make no mistake we had better make new questions, better just begin right here? I will ask you what the price in Kentucky was of an eight by eight disk fertilizer drill with grass seeding attachment, Empire make for 1903?

A. \$56.50; with grass seeder—I beg your pardon \$58.50. I for-

got to add the grass seeder again. That is to the best of my ability and knowledge.

Q. Now that includes grass seeder attachment, and fertilizer drill; the whole thing complete?

A. Yes, sir.

Q. What was it in 1904?

A. It was \$54.00.

Q. Now 1905?

A. \$54.00.

Q. 1906?

A. \$54.00.

Q. 1907?

A. \$55.00.

Q. 1908?

A. It was \$59.00.

Q. 1909?

A. \$59.00.

Q. 1910?

197 A. \$59.00.

Q. 1911?

A. \$61.50.

Q. Now then what was the six by eight for 1903?

A. This was the six by eight I have been calling.

Q. I thought that was the eight by eight; give me the eight by eight for 1903. What was the price in Kentucky of the eight by eight disk fertilizer drill with grass seeding attachment, Empire make, for 1903, the eight by eight?

A. \$64.50.

Q. 1904?

A. \$60.00.

Q. 1905.

A. \$60.00.

Q. 1906?

A. \$60.00.

Q. 1907?

A. \$61.00.

Q. 1908?

A. \$63.00. No, \$65.00; I forgot to add the grass seeder.

Q. \$65.00 are you sure?

A. Yes, sir.

Q. 1909?

A. \$65.00.

Q. 1910?

A. \$65.00.

Q. 1911?

A. \$67.50.

198 Q. That is the Empire, isn't it?

A. Yes, sir.

Q. Now then, what was the price in Kentucky of the Hoosier drill, eight by eight, disk fertilizer, with grass seeder attachment, in 1903?

A. \$60.00.

Q. 1904?

A. \$60.00.

Q. 1905?

A. \$60.00.

Q. 1906?

A. \$60.00.

Q. 1907?

A. \$61.00.

Q. 1908?

A. \$65.00.

Q. 1909?

A. \$65.00.

Q. 1910?

A. \$65.00.

Q. 1911?

A. \$67.50.

Q. Now, what was the price of the Hoosier in Kentucky the six by eight, with fertilizer and grass seeding attachment for 1903?

A. \$52.00.

Q. 1904?

A. \$52.00.

199 Q. 1905?

A. \$52.00.

Q. 1906?

A. \$52.00.

Q. 1907?

A. \$53.00.

Q. 1908?

A. \$57.00.

Q. 1909?

A. \$57.00.

Q. 1910?

A. \$57.00.

Q. 1911?

A. I have not convused on my grass seeder again; go back on the six by eight, won't you.

Q. Let us begin in 1903, with the six by eight?

A. It was \$54.00.

Q. Well \$54.00?

A. Yes, sir.

Q. 1904?

A. \$54.00.

Q. 1905?

A. \$54.00.

Q. 1906?

A. \$54.00.

Q. 1907?

A. \$55.00.

Q. 1908?

- A. \$59.00.
- 200 —. 1909?
- A. \$59.00.
- Q. 1910?
- A. \$59.00.
- Q. 1911?
- A. \$61.50.
- Q. When did you buy your last plant, what year?
- A. I think it was in the Spring of 1908?
- Q. The spring of 1908?
- A. Yes, sir.
- Q. What plant was that?
- A. The Buckeye, or the P. P. Mast Company.
- Q. How many plants did you own then?
- A. We got the Evans, counting it, it was a small proportion; we owned seven plants.
- Q. You bought the last plant in the Spring of 1908?
- A. I was away at that time.
- Q. When did you begin the negotiations for that plant?
- A. They were in the hands of a receiver, and they had been after us. I couldn't say; I wasn't familiar with the negotiations. But we had negotiations they were trying to sell to us two or three times.
- Q. You concluded in 1907 to purchase and consummated the purchase in 1908?
- A. No, sir; I don't think we concluded to purchase until the day it was bought.
- Q. You had been considering it?
- Q. We were very much against it.
- Q. You did buy it in the Spring of 1908?
- 201 A. I wouldn't state positively.
- Q. What is your best recollection?
- A. My best recollection is it was in the Spring or Summer of 1908.
- Q. The prices that year went up four dollars? -
- A. In 1907 they were \$55.00 and in 1908 they were \$59.00 after we got that new plant.
- Q. Let us take up the Kentucky drill, Mr. Carr, what was the price of the Kentucky drill in 1903, an eight by eight size with fertilizer and grass seeding attachment?
- A. I can't speak definitely on the Kentucky, in Kentucky on that machine; the best of my knowledge the price of that was \$60.00 on an eight by eight in 1903.
- Q. In your first statement as to the price of that machine in 1903, you made it \$58.00?
- A. I didn't add the grass seeder.
- Q. It was \$60.00?
- A. Yes, sir.
- Q. 1904?
- A. \$60.00.
- Q. 1905?

A. \$60.00.

Q. 1906?

A. \$60.00.

Q. 1907?

A. \$61.00.

Q. 1908?

A. \$64.00.

Q. Have you got the grass seeder on that?

202 A. No, sir; it was \$65.00.

Q. 1909?

A. \$65.00.

Q. 1910?

A. \$65.00.

Q. 1911?

A. \$67.50.

Q. What was the price of the six by eight Kentucky drill with fertilizer and grass seeding attachment for 1903?

A. Well—

Mr. BOWMAN: I hesitate to make an objection, but it seems to me that the witness having answered that there was a straight advance in the prices of the drills, in certain years, one dollar, and other years four dollars, and in others two dollars, and I think fifty cents addition for the grass seeder; it seems to me that his answer covers the whole questions covered by this line of examination. I submit it to the court.

Mr. CARROLL: I think, in order to get a full view and clear understanding of the case, that it is better to take up each drill, and show what changes were made in the prices, in order to have a full and complete record as to each drill. When you say a general advance for the year, you have got to go back to figure upon what the original prices were, and this way we have no trouble in estimating what the change was.

203 The COURT: I think that it would not be improper to call the attention of the witness to every and any particular point and ask him about it; but I will ask counsel to make it as brief as possible though.

Q. The six by eight now, Mr. Carr, in 1903?

A. Style?

Q. Kentucky?

A. \$52.00. \$54.00 with grass seeder.

Q. 1904?

A. \$54.00.

Q. 1905?

A. \$54.00.

Q. 1906?

A. \$54.00.

Q. 1907?

A. \$55.00.

Q. 1908?

A. \$59.00.

Q. 1910?

A. \$59.00.

Q. 1911?

A. \$61.50.

Q. Now the Superior drill eight by eight with this fertilizer and grass seeding attachment, what was the price in 1903, for Kentucky?

A. Eight by eight \$63.00.

Q. 1904?

A. \$60.00.

Q. 1905?

204 A. \$60.00.

Q. 1906?

A. \$60.00.

Q. 1907?

A. \$61.

Q. 1908?

A. \$65.00.

Q. 1909?

A. \$65.00.

Q. 1910?

A. \$65.00.

Q. 1911?

A. \$67.50.

Q. Now the six by eight disk fertilizer grain drill with grass seeder attachment, what was the price in 1903?

A. \$54.00.

Q. 1904?

A. \$53.00—\$52.00.

Q. 1905?

Q. \$52.00.

Q. 1906?

A. \$52.00.

Q. 1907?

A. \$55.00.

Q. 1908?

A. I have got confused in the grass seeder again.

Q. Yes, sir?

A. Commence with the six by eight, please.

Q. 1903, the six by eight?

205 A. It is \$56.00.

Q. 1904?

Q. \$54.00.

Q. 1905?

A. \$54.00.

Q. 1906?

A. \$54.00.

Q. 1907?

A. \$55.00.

Q. 1908?

A. \$59.00.

Q. 1909?

A. \$59.00.

Q. 1910?

A. \$59.00.

Q. 1911?

A. \$61.50.

Q. Now I understand you to say there was no Buckeye sold in Kentucky?

A. Not to my knowledge.

Q. What about the Farmer's Favorite?

A. I think possibly a few of them sold.

Q. Have you any prices for Kentucky?

A. Just the same price as the others except 1903; it was much higher.

Q. Were there changes made of the same character in the disk fertilizer drills of the sizes ten by seven and ten by six?

A. Yes, sir.

206 Q. And the twelve by eight?

A. We don't make the ten by six fertilizer.

Q. The twelve by eight?

A. Yes, sir.

Q. Same changes?

A. Yes, sir.

Q. Twelve by seven?

A. Yes, sir.

Q. Twelve by six?

A. No, sir; we don't make it.

Q. What others besides those you have named were the prices changed?

A. That covers all of the fertilizer drills: The sizes you have named.

Q. Did you increase the price of the fertilizer attachment?

A. The price of the fertilizer attachment decreased in 1903, in 1904, it decreased from the 1903 price, if I remember correctly; I will get that in a minute. No there was an increase.

Q. When?

A. Increase of one dollar in the period.

Q. The fertilizer attachment?

A. It is a part of the increase named in those prices.

Q. Did you increase the seeding attachment?

A. Fifty cents, yes, sir. But that is all part of the increase in these prices.

Q. Mr. Carr, in standardizing those machines, did you make or did you get them so the wheels of all of the machines — of the same size, that is the Empire, Hoosier, Kentucky, Superior, Buck-
207 eye, and Farmers Favorite? Not the Buckeye but the others?

A. No, sir; we did not.

Q. You standardized, or rather made the same size, the Empire, Hoosier and Kentucky?

A. Yes, sir.

Q. Did you make the Superiro, Buckeye, and Farmer's Favorite all the same size?

A. No, sir.

Q. You made no change in them?

A. No, sir; not by standardizing them; so far as the hubs and parts are concerned.

Q. Were they standardized in any particular?

A. Very little; nothing except the *the* Superior, the diameter of the wheel, was increased to forty eight inch wheel. But the Bickford & Huffman wheel and the Superior are still different.

Q. What was the diameter of the Buckeye?

A. Forty eight inches.

Q. What was the diameter of the Farmer's Favorite?

A. Forty eight inches.

Q. So far as the wheel is concerned, you changed the Superior so as to correspond with the Buckeye and the Farmer's Favorite?

A. We increased the diameter and make it the same; otherwise it is not standardized.

Q. Will the Superior wheel now fit on the Buckeye machine?

A. No, sir.

Q. Will the Empire wheel fit on the Hoosier machine?

208 A. Yes, sir.

Q. Will the Kentucky wheel fit on the Hoosier?

A. Yes, sir.

Q. In fact, the wheels of the Hoosier, Empire and Kentucky are all transferable?

A. Yes, sir.

Q. How do you make those wheels, explain to the jury?

A. I suppose the first operation would be to make the hub. The first operation would be to make the collar; the first day. The second day the hub would be cast. After that it would be cleaned up and bored out, and the *tenants* cleaned, and delivered over to the wheel department; the spokes driven into the wheels; then they are rimmed, and the dowel pins put in. The tire is welded in the blacksmith department; and the tires are put on, and the *wheels* painted first a single coat, and second a double coat and then striped and varnished and stored.

Q. If the wheels are of different diameter you would have to have different molds, and paraphernalia to make the different size wheels?

A. Yes, sir.

Q. If you have them all the same size you can make them all in the same mold?

A. We made this same hub, and we make the wheel forty, forty two or forty eight inches; it is controlled by the length; the diameter.

Q. What about the forty eight in diameter; the same hub can be used on different diameters, and it is a considerable saving both in machinery and labor to make all of the wheels of the same

209 size rather than three or four different sizes?

A. I wouldn't say it was. It is a convenience, and a great saving in not having so many—

Q. Isn't it a great saving in labor?

A. Possibly there is some saving in the labor, on account of not having to change the machinery.

Q. Wouldn't you have to have different moulds for the different sizes?

A. Wouldn't necessarily follow.

Q. Different rims?

A. Yes, sir.

Q. You have a uniform rim and a uniform—

A. It wouldn't be a saving if the wheel was made larger.

Q. But if you had one wheel of a different size, then you would necessarily make them on different moulds; but in making them all in that size, in making a larger quantity, isn't it a saving?

A. In labor?

Q. Yes, sir?

A. Some.

Q. And a saving in the greater output of the *greater output of rims*?

A. In material.

Q. Not in material but in *proportion*? In other words if you had to make fifty rims one size and fifty another and fifty another, wouldn't it be cheaper to make a hundred and fifty one size?

A. We buy our rims.

210 Q. Well you buy them in larger quantities and get them proportionately cheaper?

A. I can only answer that this way a forty two costs us twenty, and a forty eight costs about thirty cents.

Q. There is no difference in the price on account of the amount of the purchase?

A. Of course there would be if we only purchased ten or fifteen or a hundred. It would be more expensive. We have to purchase all of ours in car load lots.

Q. You say the Preferred stock draws six per cent; or that dividend was declared on it?

A. Yes, sir; six per cent on the stock of the present Company.

Q. Common stock, or dividends on what?

A. The Common stock dividends are from nothing to four per cent.

Q. In 1910 what was it?

A. I am not able to answer the question. I am not familiar with that book; I think four per cent.

Q. That is tax free, so far as the individual is concerned?

A. No, sir.

Q. Doesn't the American Seeding Machine Company pay taxes?

A. No, sir.

Q. Doesn't the Richmond plant pay taxes on the Richmond plant?

A. Not on the stock.

Q. Isn't that one of the charges against the plant?

A. Not on the stock; on their tangible property.

211 Q. Do I understand you to say when the corporation pays on its tangible property that it doesn't cover the stock?

A. To the stock-holders in the State in which the Company is located, the stock holders pay no tax.

Q. The Stock holders in Ohio pay no tax upon their stock?

A. No, sir.

Q. So far as the Stockholders are concerned, in Ohio, it pays six per cent dividend, free of charges?

A. Yes, sir.

Q. And the common stock pays the same way?

A. Yes, sir.

Q. Mr. Carr, what arrangement has the American Seeding Machine Company with the International Harvester Company?

Mr. BOWMAN: I suppose the question should be confined to the period ending November 16th, 1911?

The COURT: Yes, sir. Sustain the objection.

Q. What negotiations were entered into with the International Harvester Company, or the International Harvester Company of America, prior to November 16th, 1911, towards taking over the output of the American Seeding Machine Company, or taking over the American Seeding Machine Company, or its plant at Richmond, or Springfield?

A. None.

Q. Up to that time, no negotiations had been entered into?

A. No, sir.

Q. It all has been since then?

Mr. BOWMAN: We object.

The COURT: Sustain the objection.

212 Q. Did the International handle any of the output prior to November 16th, 1911?

A. No, sir.

Q. Were there any negotiations entered into with the International Harvester Company prior to that, looking toward the handling of the output of any of it, or any part of it?

A. No, sir.

Recross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Did your company have any connection with the International of any kind prior to that time?

A. No, sir.

Q. You described the operation of making wheels, was that the operation of making a metal wheel or a wooden one?

A. Wooden.

Q. Is the hub of iron?

A. Yes, sir.

Q. The confusion occurring in your attempt to figure for counsel, occurred from the fact that your price list is made without the grass seeder attachment?

A. Yes, sir.

Q. And that the price of the grass seeder was two dollars?

A. Yes, sir.

Q. Until 1911, when it was fifty cents more?

A. Yes, sir.

Q. In each case you had to keep that in mind and do it mentally?

213 A. Yes, sir.

Q. And you kept, both sides calling for other matters you kept getting confused?

A. Yes, sir.

Q. The figures on your price sheet have not been altered?

A. No, sir; I was unable to add the two dollars every time as I go along.

Q. And you would forget the size he was calling for?

A. Yes, sir.

Q. These original price books you spoke of, in which the prices were kept, what would have been required to bring them here?

A. They are self binders.

Q. I mean what amount of space would they have occupied?

A. Probably they would take nearly as high as this rail; they contain the figures and estimates of a great many; estimates on fourteen hundred sizes.

Q. It contain- a copy of the printed price sheets?

A. No, sir; it is the information from what the printed sheets are made.

Q. You were not able to find the printed sheets?

A. No, sir; I might have found them for the last two or three years, or four years back. This was taken from the original record, from which the price sheets are made.

Q. You have been inquired of in regard to the Buckeye Machine, from whom did you acquire that property?

A. I understand, and know it to be a fact, that we acquired it from the United States Courts.

Q. Through a receiver's sale of the Mast property?

214 A. Yes, sir.

Q. The Mast Company had been manufacturing the Buckeye drill for many years?

A. Yes, sir.

Q. It had been one of the well established drills on the market?

A. Yes, sir.

Q. And failed in business?

A. Yes, sir.

Q. And it dragged along in the hands of the receiver for a number of years?

A. Yes, sir.

Mr. CARROLL: I must object to the counsel leading the witness in this manner.

The COURT: Mr. Bowman, try and not make statements that way in an interrogatory form to the witness.

Q. How long has this corporation the Mast Company, how long did it continue in the hands of the receiver before the property was sold?

A. I think about three years. Three or four years.

Q. Was the property offered for sale at Public auction any time before you bought it?

A. It was; probably more than once; I know of once.

Q. Did it sell?

A. No, sir.

Q. Then you bought the property at private sale from the receiver?

215 A. Yes, sir. The personal property.

Q. And you later bought the real estate at public auction?

A. Yes, sir.

Q. Were the prices for 1908 fixed in 1908 or 1907?

A. In May, 1907.

Q. In May 1907, when the prices for 1908 were fixed had your Company acquired the Mast drill?

A. No, sir.

Q. Had you any purpose of acquiring it?

A. No, sir.

Q. Was there any connection between the acquisition of the Mast property and the raise of the prices for 1908?

A. No, sir.

Q. There has been referred to a matter, Mr. Carr, to the panic of 1907, causing a reduction in steel prices; did that cause any increase or any great reduction in the articles of manufacture that you bought, or had you bought the articles before the drop in prices?

A. No, sir.

Q. What was your condition in regard to that of 1907?

A. Well our prices were settled in May. Or early June. We always set them in June or May of 1907, for 1908.

Q. What was the material bought for that year?

A. To a large extent from that time on up to October or November.

Q. You have spoken of an advance of fifty cents in the grass seeder attachment, was there any change in the construction on which that change of price was based?

A. Not a great deal; there was some change in the construction, and a new method of gearing it adopted; and a new method of transmitting the power to it.

216 Q. Had there been any change in that grass seeder attachment since 1903?

A. No, sir.

Q. You spoke of an advance of one dollar on the fertilizer, didn't you?

A. It is not a fertilizer attachment. It was a part of the machine; except that it was a distinct machine, and we added one dollar more on account of it; we formerly added sixteen dollars to the price of the plain drill. The plain drill that was selling at \$45.00 in the same size with the fertilizer would be \$61.00. We added one dollar to

the price, making it \$62.00 which is part of the eight or nine dollar advance.

Q. Was that based on any change?

A. Yes, sir, very considerable.

Q. In what?

A. In the feed mechanism.

Q. Could you tell, in a brief way, what was the old feeding mechanism, and what was the new one; how was the old one known?

A. It was known as the Marks feeding system. You could only change it so it would sow three or four quantities.

Q. How did it operate, by a chain?

A. By a chain of wheels. I think the changes that were made were in three or four different ways; some had three or four changes. The present fertilizer is known as the Wizard. It has sixteen changes; it can be made lever, the change in the quantity
217 sown, can be made by lever by setting it in different notches; and can be changed instantly.

Q. When the farmer wished to make the change under the old method did he have to stop the drill?

A. Yes, sir; and change the wheels. We, with the new feed, increase or decrease the opening, rather than change the speed of the rod.

Q. What does he have to do now?

A. He doesn't have to stop the drill; he can do it when in motion.

Q. You say it gives sixteen changes?

A. Yes, sir; it will sow a larger range; or it will sow a smaller quantity within the range, or a large quantity. Or change the quantity when he strikes rich soil, he can change it to a small quantity, or poor soil to a larger quantity.

Q. Does that reduce the durability of the drill in any way?

A. No, sir.

Q. Did it increase the cost of building?

A. Very materially; it is necessary to do what is termed factory—what is termed machine work; a great deal of turning and drilling, boring them to the accurate sizes. Necessarily much more.

Q. As opposed to machine work, what is the work used in the castings and moldings?

A. There are two types of machines on the market. The machines that are put together almost as they come from the
218 sand, without any fitting except being cleaned. Then there is another class of machines that the parts require to be very carefully fitted, and the parts turned to an accurate size. One is known as a factory fit, just as it comes from the foundry.

Q. Was the increase in the cost of lumber gradual, or was there a jump?

A. There was a gradual increase. Now and then it was a little jump.

Q. Is it possible for you to change the prices of your machines constantly as to meet the fluctuations?

A. Yes, sir.

Q. Why?

A. Because the prices established in June or May are good for the following year, and we make a contract and agree to furnish the customers all of the machines required for the year following. Therefore it is impossible to fluctuate them.

Q. You have to take the chance?

A. Yes, sir.

Q. It may ruin you, or may be beneficial?

A. Yes, sir.

Q. What effect would it have on the trade, the stability of the trade, if you were to be continually changing the price of articles?

A. I would think it would have a very disastrous effect. It is not customary at all. If a person didn't know from one time to another and it is reasonable to think that the implement
219 business would be handled on prices for a longer time, because it is strictly a season implement. And it is only used one season in the year; in Kentucky in the Fall, and in the Northwest, in the Spring.

Q. You said there had been no material change in the corn drill?

A. None.

Q. Why was that?

A. Because of the fact that the machine was slightly changed, to cheapen it in construction. It was changed. Where we used to do what is termed machine work, we made this less machine work done in it. We modified it in the kind of material, and changed the style from high carbon steel to another grade less expensive; that is another reason. Another reason was the margin of profit on the corn drills made it unnecessary.

Q. These changes in the construction effect the value of the tool?

A. No, sir.

Q. You spoke of the fact that there was a straight advance of one dollar in 1906, throughout all of the sizes of drills?

A. Yes, sir; 1906.

Q. Was there an advance of four dollars through all of the sizes in 1908?

A. Only to the fertilizer drills; all sizes of fertilizer drills.

Q. I believe you explained that it wasn't practical to split it up in cents?

220 A. Yes, sir.

Q. What is the basis through your company of the manufacturing cost, in your business, as related to the selling price of the article?

A. Sir.

Q. The direct manufacturing cost, or the factory cost where it is prepared, what proportion?

A. Then prepared for the sales department.

Q. Yes, sir.

A. Sixty per cent.

Q. Sixty per cent what?

A. The sales price.

Q. That is you pay, in your business, if an article cost you sixty dollars the factory cost of production, you add forty dollars, in order to cover your costs, and allow a profit?

A. No, sir; we would answer it—

Q. Take a machine the price of which is one Hundred Dollars?

A. Sixty dollars of it is cost.

Q. What kind of cost?

A. The material, direct labor, indirect labor, factory burdens; charges, supplies, and fuels.

Q. Does that prove out to be a correct basis of the manufacturing cost?

A. That is the basis we use.

Q. Have you tested its accuracy, as a basis, its correctness?

221 A. I don't believe I appreciate your question. We add to the cost forty per cent of each article; the factory cost is sixty Dollars, we add—Or each article sold at One Hundred Dollars; Sixty Dollars of that is manufacturing cost.

Q. How much of that sixty per cent or Sixty Dollars is the cost of the direct production, that you spoke of the other day; that is, say material and labor, that goes directly in the drills?

A. Forty five Dollars of the Sixty.

Q. What is represented by the Fifteen?

A. That represents the indirect labor.

Q. What is the nature of that?

A. Trucking; sweeping; watchmen; engineers, and some firemen; loading, and everything connected with the factory.

Q. The fuel?

A. No, sir; that doesn't come in that. That comes in as a burden.

Q. How about the oil?

A. That is burden. Each Factory probably runs that matter in a different way. Our method of doing it, is to take the direct cost of the article, the material, and the direct labor, say in a wheel; that is manufactured, the spokes driven in the tire welded, put on, and the direct labor, the *the* painting it, that is direct labor. When the material is brought in and unloaded, whenever the material is delivered in the warehouse by the truckmen, to the workmen, that is indirect labor; whenever it is finished then that is

222 all of the indirect labor.

Q. Is that an average general rule of the factory, does it apply in each case?

A. Approximately so.

Q. It is an average general rule and applies to each specific article?

A. Yes, sir. It is a rule that we have verified by long experience; that an article, a certain per cent is for material; a certain per cent for the direct labor, and another per cent for the indirect labor; and another per cent for the burden.

Q. How does the actual factory cost of producing these drills

sold in Kentucky, conform to that rule; or how nearly does it conform to that general rule?

A. It conforms to the rule, because that is the basis from which we figure the cost.

Q. Have you figured the cost of them as an independent proposition?

A. We make the prices on those figures.

Q. Have you figured the cost of these machines as an independent proposition of itself?

A. Yes, sir. We figure those in our annual price list.

Q. How does that result produced compare with this general rule.

A. It is that general rule.

Q. Is that the basis on which these prices have been fixed, that are referred to in this case?

A. Yes, sir.

223 Q. I noticed you spoke of a raise of six dollars in the corn planters during this period?

A. I beg your pardon, if I did; it was Five Dollars, I think, you will find it.

Q. What per cent increase was there on the price of the corn planters; what was the price before that?

A. Twenty Two dollars and now it is Twenty Seven, or was in 1911.

Q. Is there any article on which you made a higher per cent in the raise?

A. That is the highest. Unless you call the grass seeder attachment; probably it would figure more that way; we always figure it with the machine.

Q. What per cent of the trade of the Country in corn planters does your Company represent?

A. Possibly five per cent; between four and six. It may vary with different seasons.

Q. You have mentioned the growth of the volume of the business of the American Seeding Machine Company, in 1911 as compared with 1902 and 1903, and the earlier years; what has been the cause of that; how is the development brought about?

A. By constant efforts to sell the goods, and pushing them particularly in new territories; in territories where we had no trade previous to that time.

Q. Has there been any extension to the uses to which said machines have been put?

A. Yes, sir.

224 Q. Is that a part of the development of the business by your increasing the uses, and getting the people to use it for certain purposes?

A. I would say that five years ago, it was almost a very extraordinary thing to use these machines for sowing Fall oats. It was done, but in a small number of cases. Now it is used almost entirely in the North. In Illinois and Iowa.

Q. Are these certain incidents of the way in which the trade is developed?

A. Yes, sir.

Q. Was your per cent of the total trade as great in 1911 as it was in 1903?

A. I would say not.

Q. What is the course of your Company, in the conduct of this business, as to traveling solicitors; they send in the proposition from the dealer, and the contract; how is that contract done; after you have approved that contract and sent it back to the dealer; how is that contract carried out; what is the nature of the business?

A. When the contract comes in, it is looked —; the rating *for* the dealer is examined——

Q. I mean in regard to the handling of the goods; where do they come from to fulfill that contract?

A. From the factory.

Q. Are they usually made in view of the contract, or is the contract made before the goods are made?

A. In most cases the goods are made before these contracts
225 are made. The basis of the contract is for the manufacturing, of course. Of course a great many seasons we have to manufacture goods on past experience.

Q. Are the goods shipped in Kentucky except for the purpose of fulfilling such contracts?

A. No, sir.

Q. All goods that come into Barren county come in pursuant to a contract, and are shipped from Richmond or Springfield?

A. Yes, sir.

Q. What is the nature of the transfer house business?

A. The goods are shipped to the transfer house to be re-shipped.

Q. What is the use of this transfer house?

A. It gets the goods merely to *to* get them nearer to their destination, in car load lots.

Q. That is a freight saving?

A. Yes, sir; that is one item; probably the most particular item. The goods are shipped by local freight, is not only more expensive, but in being transferred and handled over the depot yards, it is done at a delay and then *then* it scars the machines up; and is a delay in getting the goods to their destination.

Q. You said one purpose?

A. That is the principal purpose, in shipping the goods to the transfer house. And in repairs, particularly on account of getting them quicker delivery to the farmer and dealer and customers. In several cases his machine needs repairs and it does not take as long to
get them.

226 Q. Do their contracts call for future order?

A. Yes, sir; they cover all they may order. If they buy one and want to order twenty, they get them at the same price, during the period of the contract.

Q. How many employés are employed by your Company; that is Factory Employés, laborers?

A. About two thousand; well from eighteen hundred to twenty two hundred.

CARROLL: Does that include both factories?

WITNESS: Yes, sir.

Q. Who is the highest price Officer connected with the defendant Company?

A. The office—

Q. Who draws the largest salary?

A. I believe I have the Honor or dishonor, I don't know which.

Q. What duties do you discharge?

A. The usual duties for a President of a Company. I have general charge of the business. It is pretty hard to define; still I have a great deal to do with everything; the manufacturing; purchasing; sales; and direct supervision of practically all, except the financial parts; which I have some less to do with than anything; the accounting and book keeping.

Q. You are in direct charge of the manufacturing at Richmond?

A. For the last three years.

Q. What portion of your time is devoted to the business?

A. All of it.

227 Q. For what portion of the year?

A. All of it; except possibly twelve w—one or two weeks out of the year.

Q. What salary do you get?

A. Seventy Five Hundred Dollars.

Q. Do you get any other compensation, directly or indirectly?

A. No, sir.

Q. Is there any officer of the Company who draws more than that?

A. No, sir.

Q. Is there any officer that draws that much?

A. No, sir.

Q. How would that compare with the salary paid for such services?

A. That is a hard question to answer. I know the salary is only attractive because of the stock I own in the Business. I think it is small.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Is there a Company in Springfield, Ohio known as the Thomas Manufacturing Company?

A. Yes, sir.

Q. What does it manufacture?

A. Wheat drills.

Q. The same line as you?

A. For the same purpose, yes, sir.

228 Q. I didn't catch the name of that last company you bought at the receiver's sale?

A. The P. P. Mast Company, known as the Buckeye drill.

Q. How long had it been engaged in business?

A. I cou-dn't tell you; fifty or sixty years. A very long time. I couldn't say.

Q. It was a competitor, of course, of the American Seeding Machine Company?

A. Hardly; because it had been doing practically nothing for a great many years; ten or fifteen years.

Q. It had been engaged in business?

A. Yes, sir; in a way.

Q. The American Seeding Machine Company; those machines of course, were competing of course, with the machines manufactured by the Hoosier and Empire Wheat drills?

A. Yes, sir; in a way.

Q. Then this Company, those various Companies, the Superior, Hoosier, and others formed a combination in 1903?

A. Yes, sir.

Q. Then in 1908, your competitor, the Buckeye Company was forced into bankrupt- in to the hands of a receiver and you bought them up?

A. No, sir.

Q. Did you buy them?

A. They were forced into bankruptcy in 1904 or 1905; yes, sir.

Q. And shortly after you gentlemen formed this combination, they were forced into bankruptcy?

229 A. They had been tied up in a financial way for some time.

Q. The fact is, that about two years after this combination was formed, it went into bankruptcy?

Mr. BOWMAN: Object to that.

Q. You said 1905?

A. It may have been 1905 or 1906.

Q. Then you bought it in 1908?

A. Yes, sir.

Q. Now Mr. Carr, I show you a contract of date November 26th, 1910, or a copy of a contract, made with Dickey & Company of Glasgow, to handle the Hoosier Brand of agricultural implements, a contract made with the American Seeding Machine Company, I will ask you to examine that and state whether or not that is the sample of the contracts entered into with your various selling agents, or dealers, rather, which ever you call them?

A. Yes, sir; that is, I believe the general contract.

Q. Will you please file that and make it an exhibit with your testimony; it is marked "X. Y."?

A. Yes, sir. (Said exhibit is the same as heretofore filed and copied in this record on page 114 hereof.)

Q. Now I show you a letter, or a copy of a letter dated November 30th, 1910, directed to Dickey & Company referring to that contract, and signed by the American Seeding Machine Company, dictated by J. W. Lamson, I will ask you to examine that and
230 state whether or not that is the character of letter you write in accepting a contract, in the State of Kentucky?

A. Yes, sir.

Q. Will you please file that as a part of your testimony and mark it exhibit "A. C."?

A. Yes, sir.

Mr. CARROLL: I desire to read that to the jury.

The COURT: Very well.

Mr. CARROLL: "Nov. 30, 1910, Dickey & Company, Glasgow, Kentucky. Dear sir: Your contract made with our traveler Geo. D. Rogers has been received, accepted and approved. Copy enclosed for you to file for future reference. Your patronage is fully appreciated and we hope you will feel free to write us upon any subject touching our mutual interests. By pulling together we can certainly produce profitable results. Thanking you, and with earnest wishes for your success, we remain, Yours truly, The American Seeding Machine Company. Dictated by J. W. Lamson, Enc."

Q. I understood you to say Mr. Carr, that your confusion in regard to the prices arose from the fact that your price list didn't show the grass seeder attachment price, and you undertook to make the additions?

A. This seems to be all of the raises in prices; but it didn't show the seeder attachment.

231 Q. The price lists do show the prices without the attachment?

A. Yes, sir.

Q. But it didn't include the grass seeder attachment?

A. It is made on the basis without it.

Q. The grass seeder attachment is not in the price list?

A. No, sir; and I intended to add it.

Q. Did you take it without anything else except the grass seeder; did you omit anything else from your memoranda; did you omit anything except the price of the grass seeder?

A. No, sir.

Q. You are certain?

A. Yes, sir.

Q. How did you happen to omit that.

A. The price of the grass seeder, I know what it is, and in our general price sheets, I should have added to this two dollars.

Q. The same grass seeder fits all machines?

A. No, sir.

Q. I mean the grass seeder for an eight by eight Buckeye will fit a eight by eight Superior or Hoosier?

A. No; will not even fit on the Richmond product; it won't interchange.

Q. Will those on the Richmond interchange?

A. No, sir.

Q. Those on the Springfield interchange?

A. No, sir.

232 (And further the witness sayeth not.)

C. A. GOAD having been called as a witness on behalf of the Commonwealth, and having been first duly sworn, and being examined, testified as follows:—

Direct examination.

By Mr. RICHARDSON, of counsel for plaintiff:

Q. Where do you live?

A. Glasgow.

Q. Have you ever had any experience in handling farming implements?

A. Yes, sir.

Q. What experience have you had?

A. I have had a right smart experience.

Q. When did your experience begin?

A. My first experience was about fourteen years ago.

Q. In that experience have you handled wheat drills?

A. Yes, sir.

Q. What brand?

A. Empire and Hoosier.—I mean Empire and Superior.

Q. When did you first begin to handle the Empire?

A. I began to handle the Empire for myself—I worked for Depp & Hughes and Holeman fourteen years ago, and I went into business for myself six years ago. I handled the Empire six years ago.

Q. When did you handle the Superior?

233 A. I began to handle the Superior about five years ago.

Q. Did you ever handle any other make of drill?

A. One Kentucky drill, and a few Thomas drills.

Q. Where was the Thomas drill manufactured?

A. Springfield, Ohio.

Q. Where was the Superior manufactured?

A. It is, Ohio, I really disremember whether it was at Springfield or Dayton.

Q. Where was the Empire and Kentucky?

A. I don't remember just now, Mr. Richardson.

Q. How long have you handled the Empire?

A. I handled it about; for myself three years.

Q. How long have you handled the Superior?

A. I handled it about four years.

Q. During that four years you handled the Empire, what if any improvements were made upon it?

A. At the time I handled the Empire there wasn't but very little improvements made on it.

Q. The Superior, what improvements were made on it?

A. During the time I handled the Superior there was very little improvements made on it if any.

Q. Was there any increase in the price while you were handling it?

A. Yes, sir.

Q. What was that increase on the Superior?

A. To the best I can recollect, it was Five Dollars. I mean five per cent.

Q. What was it on the Empire?

A. Well you know it has been five years since I handled
234 the Empire; and I don't remember exactly.

Q. Before that, after you began to handle the Superior and before the increase on the price was made, what if any, improvements were made on it, during the time you handled it?

A. I don't think there was any improvements made on the Superior. Sometimes there were changes made, that I didn't consider improvements.

Q. What was the price of the Empire before the increase in price?

A. I don't know.

Q. What was the price of the Superior?

A. The increase in the Superior, to my best recollection was about three dollars and a half, or three seventy five; somewhere along there.

Q. What was its price before it was increased?

A. There was about five per cent difference.

Q. I understand that; but what was the price before they made the increase?

A. You mean the exact figures?

Q. Yes, sir.

A. I think the last time I handled the drill it cost, that was in 1907; it cost \$62.50.

Q. Was that before or after the increase?

A. After the increase; the other would be that with three and a half or three seventy-five deducted.

Q. You say you handled the Thomas.

A. Yes, sir.

Q. What, if any difference was there in the workmanship
235 and value of the Thomas and Superior?

A. The Thomas Drill and the Superior Drill were very much alike. As far as the difference in the two drills was concerned; I considered the Thomas as good as the Superior.

Q. What was the difference in the price of the two drills?

A. Something like Three Dollars and a half or Three Seventy five.

Q. Which was the cheaper?

A. Thomas.

Q. How much.

A. Three Dollars and Seventy five cents the best I remember.

Q. While you were handling the Superior, with what firm were you, what was the firm name, doing business?

A. The Farmers Hardware & Grocery Company.

Q. Were you a stock holder?

A. Yes, sir.

Q. What firm were you connected with at the time you handled the Thomas?

A. The Farmers Hardware & Grocery Company.

Q. Did you handle them both at the same time, during the same season?

A. Yes, sir, we had a sample maybe, of the Thomas the same season.

Q. What firm were you engaged with during the time you handled the Empire?

A. The Barren County Grocery Company.

236 Q. What was the nature of the improvements on the Empire?

A. The seeder attachment.

Q. Anything else?

A. Not that I remember.

Q. What is your best recollection as to the increase in the price of the Empire?

A. I think it was about five per cent.

Q. Now, in handling those machines, how did you handle them?

A. They were under a contract; a straight sale contract with a carrying clause.

Q. What Company?

A. With *cht* Superior people.

Q. With the American Seeding Machine Company?

A. Yes, sir; the American Seeding-Machine Company.

Q. At the end of the year, after the contract expired, were there any settlements made by your Company?

Mr. BOWMAN: We object to that.

The COURT: Overrule.

Mr. BOWMAN: We except.

The COURT: Of course the inquiry is confined to the period prior to the indictment, and not subsequent.

Q. Read the question. (Stenographer read preceding question to witness).

A. Yes, sir.

Q. Concerning those machines?

A. Yes, sir.

Q. Tell how it was done?

237 A. We were given many options of making those settlements. We could settle for the goods in cash, or get the discount off that way; or we could loose the discount, and they would carry the drills over to the next season.

Q. Where were the settlements made?

A. In the office at the Store.

Q. Whose office?

A. The Farmers Hardware.

Q. What County?

A. Barren county.

Q. Every year?

A. Yes, sir.

Q. When did you cease to operate business as a Member of the Barren County Farmers Hardware & Grocery Company?

A. I think it has been two years, along about now.

Q. Was that a Corporation?

A. Yes, sir.

Q. Where was it engaged in business?

A. Glasgow.

Q. How long did it engage in business while you were connected with it?

A. About three and a half years.

Q. This all occurred while you were a member of that corporation?

A. Yes, sir.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. You say they gave you an option of either paying in cash, or postponing your payment for one year?

A. Yes, sir.

238 Q. You give them your note if you didn't pay cash?

A. No, sir; we didn't give them anything at all; they carried the drills on an open account.

Q. Carried them on an open account?

A. Yes, sir.

Q. Were you the party who attended to that business for the Farmers Company?

A. Yes, sir.

Q. How did you come to stop handling their goods over two years ago?

A. I went out; I am in business. But I can speak for the other fellows; they didn't handle them after I went out.

Mr. CARROLL: There is one question I omitted to ask Mr. Carr.

Mr. BOWMAN: Very well, I am through with this witness.

(And further the witness sayeth not.)

J. A. CARR having been called back as a witness on behalf of the Plaintiff for further direct examination, and having heretofore been duly sworn, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for Plaintiff:

239 Q. You had a transfer house in the City of Louisville, your Company?

A. We had an arrangement with the people there to transfer for us.

Q. Who was in charge of that?

A. I couldn't answer that.

Q. You had a warehouse there?

A. No, sir; we simply arranged with the people to transfer our goods; the transfer house.

Q. Where was the transfer house?

A. I couldn't tell you; we changed two or three times.

Q. You had a transfer arrangement there in 1911, didn't you?

A. Yes, sir.

Q. Prior to November 16th?

A. Yes, sir.

(And further the witness sayeth not.)

C. R. BARNES having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Barnes, where do you live?

A. Bardstown, Kentucky, Nelson county.

Q. How long have you lived there?

A. About thirty years.

Q. What is your business, Mr. Barnes?

240 A. You might say general merchandise, and that of implement business?

Q. You have been engaged in the implement business?

A. Yes, sir.

Q. For what length of time?

A. Since 1888, until the 20th of last month.

Q. In 1888 what machine was you handling, drill?

A. I handled the Empire.

Q. How long did you continue to handle it?

A. I don't remember, Judge, how long I handled that drill; quite a number of years.

Q. Are you still in the business?

A. I have been until the 20th of last month.

Q. You quit the implement business the 20th of June?

A. Yes, sir.

Q. What other drill did you handle besides the Empire?

A. I handled the Superior.

Q. How long did you handle it?

A. I handled the Superior, I think about twelve years.

Q. In 1902, do you know what the price of the Superior and the Empire was to the dealer?

A. No, sir; do not; Judge, I couldn't state from recollection.

Q. Have you any data or memoranda of the price of either of those machines for any years, if so, what is the first year you know the price?

A. I will have to refer to my data.

Q. Did you make that data?

A. Yes, sir.

241 Q. From what was it made?

A. From the invoice price of the goods.

Q. Look at any memoranda you have made, if you wish, for the purpose of refreshing your recollection.

Mr. BOWMAN: Have you got the invoice prices here?

A. No, sir.

A. No, sir.

Q. Do you know how soon they discovered that?

245 A. They discovered it there; for they had men from the Factory that went to the field.

Q. You never heard of that trouble any more?

A. No, sir; I haven't handled the drill any more.

Q. Do you know they immediately found out what the trouble was, and remedied it?

A. No, sir; I don't know.

Q. Do you know whether they did or not?

A. No, sir.

Q. What is your experience?

A. It is still being sold in my territory.

Q. You say this memoranda you have in your pocket in regard to these drills was made by you from your old invoices?

A. Yes, sir.

Q. You didn't bring the invoices along?

A. No, sir.

Q. Sometimes there is a drill shipped with repair and transfer charges on it, while others are shipped without making a difference in the invoice?

A. No, sir; we didn't have any transfer charges to follow the invoice at all. We had Louisville delivery, always.

Q. There might have been some reason in the dealing, in regard to a particular drill why they knocked off one dollar or added one dollar on the invoice, when they send it to you?

A. In this, that if I sold a certain number of drills, five or more, there would be one dollar less, the contract provided for that.

246 Q. You have said that in 1906 the Empire was \$60.00 and the Superior \$61.00?

A. I will have to look at my memoranda. No, sir; they were both \$60.00 in 1906; in 1907 they were \$61.00.

Q. In 1907 they were both \$61.00?

A. The Empire was \$61.00 yes, sir.

Q. So that in 1906 as well as in 1907 the price of the two drills to you was the same?

A. Yes, sir.

Q. I think you stated in 1906 it was different?

A. Yes, sir; I failed to look at this.

Q. You made an error in looking at your memoranda?

A. No, sir; I have a correct memoranda.

Q. May I see your memoranda?

A. Yes, sir. (Hands paper to Mr. Boman.)

Q. Is all of the memoranda on that page?

A. No, sir; you will find another page.

Q. May I look at it?

A. Yes, sir.

Q. I don't find any place on the memoranda where you have made the price of the Superior in 1906 with the fertilizer and seeder?

A. No, sir; that is what I say, it is 1907.

Q. I find the Empire 1906 \$60.00, and the Empire for 1907

\$61.00, but I don't find any place where you have made a memorandum of the Superior in 1906?

A. No, sir; excepting the one horse drill.

Q. So you have no memoranda of that?

A. No, sir; not for 1906; I have no memoranda of the
247 Superior at all.

Q. Are you therefore, able to tell what the price was?

A. No, sir; I couldn't say just what the price was in 1906. But my recollection is that it was the same price.

Q. Same in 1906 as the Empire?

A. Yes, sir; I know I had it before me, but I see I failed to copy it. But I had it before me, I had the invoice spread out on my desk, and I aimed to copy them all but I overlooked that.

Q. The farmers bought some of these Empire drills and they didn't distribute the fertilizer right, so you were notified, or they let you know?

A. Yes, sir.

Q. And you let the Factory know it?

A. Yes, sir.

Q. And they did the right thing?

A. Yes, sir.

Q. They did in all of your dealings with them?

Mr. CARROLL: We object to that.

The COURT: Sustain the objection.

Mr. BOWMAN: We except.

(And further the witness sayeth not.)

M. F. CRENSHAW having been called as a witness on behalf of
248 the plaintiff, and having been first duly sworn, and being
examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You have been sworn?

A. Yes, sir.

Q. Where do you live?

A. I live at Lakeland, Kentucky.

Q. What is your business?

A. I travel for Fairbanks Morse & Company.

Q. How long have you been traveling for that Company?

A. Since 1908.

Q. Is the Fairbanks Morse & Company what is known as an independent concern?

A. Yes, sir.

Q. What character of goods does it handle?

A. Sells scales, Gasoline Engines, Mills, Mill Supplies, and Steam
Pumps.

Q. Of what character, or what make?

A. Sir?

Q. What particular branch of the business did you handle here?

A. I handle the merchandise department; gasoline engines and Steam pumps.

Q. Where?

A. From Louisville to Guthrie.

Q. Of what nature or what material are the machines you handle made, in a general way?

A. They are made out of castings; there is some little wood in them and very little mal-able iron and steel.

249 Q. Mr. Crenshaw, has there been any reduction in the price of those machines made of the material you have mentioned, at any time, within the last four or five years?

Mr. BOWMAN: We object to the question.

The COURT: Sustain the objection.

Mr. CARROLL: We except.

Q. Do you know whether or not there has been a reduction in the price of the material used in the construction of those machines?

A. No, sir; I don't know.

Q. I will ask you this question, probably I have asked it before, state whether or not there has been any reduction in the last four years, and that reduction continuing up to the 16th day of November, 1911, in the price of your machines, made out of steel, cast iron, and mal-able iron?

Mr. BOWMAN: We object to that.

The COURT: Sustain the objection.

Mr. CARROLL: We will except and make the avowal: (Not in presence of jury.) If the witness was permitted to answer he would state that there has been a reduction of twenty per cent.

Q. Were you ever engaged in the services of the International Harvester Company?

A. Yes, sir.

250 Q. I will ask you if you know of what the various repair parts, what are called repairs of the machinery of the International Harvester Company are made; what are the repairs?

Mr. BOWMAN: We object to that.

Mr. CARROLL: You can stand aside for the present.

(And further the witness sayeth not.)

FELIX BRADFORD having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. RICHARDSON, of counsel for plaintiff:

Q. Where do you live?

A. In Glasgow.

Q. What business are you engaged in?

A. The hardware business.

Q. What firm are you connected with.

A. Bradford Brothers.

Q. Does your firm handle any line of farming implements?

A. Yes, sir.

Q. Handle any line of wheat drills?

A. Yes, sir.

Q. What make?

A. Handled the Superior.

Q. By whom is that drill made?

A. American Seeding Machine Company.

Q. How long have you been handling that machine?

A. Three years.

251 Q. Well after you began to handle it was there any increase in the price put on it?

A. Yes, sir.

Q. How much?

A. Two dollars.

Q. Before the increase was put upon it, was there any improvement put upon it?

A. I don't know that there was.

Q. What was the price before the increase went on it?

A. It was \$57.50 for the six disk, and \$59.50 for the eight disk.

Q. What did that include?

A. The fertilizer and grass seeder.

Q. Did the other include the same attachment?

A. Yes, sir.

Q. Was the increase put upon both of them?

A. Yes, sir.

Q. The same on each?

A. Yes, sir.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant.

Q. You say you began handling the Superior three years ago?

A. Yes, sir.

Q. When was the increase of two dollars made?

A. It was last year, I believe.

Q. Then you know of no changes made in the construction of the drill from the time you began to handle it?

252 A. Between the time I handled it and now; yes, sir.

Q. Between the time you began to handle it and the increase of price?

A. I don't believe there was.

Q. The increase in price was made in 1910 for the delivery of 1911?

A. Yes, sir.

Q. Were there any differences in the construction then from what the goods were before that?

A. It seems to me that the difference was in the feed on the drill and it was made in 1912; that is, we contract the Fall for the year

of 1912. This feed came in this season; I don't think they had it last year. They gave us this feed.

Q. Do you remember a change in the drill in regard to the little shield at the foot of the disk?

A. Yes, sir.

Q. It is now adjustable?

A. Yes, sir.

Q. When did that come in?

A. Last year, or year before.

Q. It came on before the increase in price?

A. Yes, sir.

Q. What was the nature of that change?

A. That little contraption there that rakes the dirt off of the disk is reversible, has two sides. And another change that was made on that was the land measure. They had a poor land measure on it before they made us a better one, one that gave satisfaction.

253 Another small change was in the ironed hopper, that was not done before.

Q. This adjustment at the disk involved quite a little work in the change of that into an adjustable piece, where it used to be rigid didn't it?

A. Yes, sir.

Q. That was the change, it used to be not adjustable?

A. Yes, sir.

Q. It took bolts, and screws, and holes, and quite a little work to make that an adjustable piece?

A. Yes, sir.

Q. It improved the drill?

A. Yes, sir.

Q. Why?

A. Because they put it in a different piece all together, and it is much more satisfactory to work.

Q. You can adjust it to suit you now?

A. Yes, sir.

Q. If the disk became worn, the shield, I mean, when it became worn, instead of having to get a new piece, now you can just adjust it and it will be all right?

A. Yes, sir.

Q. That was the objection to the old?

A. Yes, sir.

Q. So a shield is now given him with the drill that will last indefinitely longer, than it would if it was rigid, is that true?

A. I suppose it would last longer. Yes, sir; it seems to me that it would be a right smart improvement.

254 Q. It will take up the wear?

A. Yes, sir.

Q. What was the other that was made?

A. You have a better land measure on it. Before, the one did not give satisfaction; it didn't the first year we handled it. We had a good deal of trouble. Later they put on a land measure with a

spring on it; the old one just merely set on before; and now the spring holds it and it always does the measuring.

Q. That required additional work?

A. Some.

Q. When was the grass seeder changed?

A. I don't know anything about any change on it.

Q. That was made before you took it?

A. It might have been; I haven't seen any change.

Q. You don't know anything about that?

A. No, sir.

Q. Wasn't there a change made in the drill so that the rod that extends back of the drill is now adjustable?

A. Yes, sir.

Q. That come into the 1911 goods?

A. Yes, sir.

Q. That wasn't on it when you first had the goods?

A. No, sir.

Q. Didn't that rod annoy the farmer in sotring away his drill, sticking out behind that way. He couldn't store it as close in his barn, by reason of it running into something else, and liable to break it?

255 A. Yes, sir; that would be one feature, and another in walking and driving behind it it is in the way.

Q. They made that so it would fold up?

A. Yes, sir.

Q. That required additional bolts, holes, and screws, and screw threads?

A. It required one more knuckle; and a little angle up there.

Q. Where it was just one plain solid piece before?

A. Yes, sir.

Q. Do you know whether there was a change in the amount of mal-able iron in the 1911 drill over the 1910 drill?

A. No, sir.

Q. You know there is some mal-able iron used in the drill?

A. No, sir; I don't know that either.

Q. Do you know that mal-able iron is more expensive than gray iron?

A. Yes, sir.

Q. And stronger?

A. Yes, sir.

Q. If they did increase the amount of mal-able, it increased the cost, and increased the value?

A. Yes, sir; if they did that, they did.

Q. Do you know whether it is so or not?

A. No, sir; I couldn't say.

Q. You know they added two dollars to the price?

A. Yes, sir.

256 Q. You paid that price?

A. Yes, sir.

Q. Did you pay it willingly?

A. Yes, sir.

Q. Why did you stand for that raise?

A. We people in business have to stand for the raises as they come, without making any kick. We haven't had any kick from the farmers as to the price of the machine, and we pay the price, but didn't add it on to the farmer.

Q. You did not add it on?

A. No, sir.

Q. There are other drills on the market you couldn't have handled?

A. Yes, sir.

Q. Here at the time you handled this?

A. Yes, sir; I suppose there was.

Q. Don't you know there were, during that period, and adapted to the same purpose?

A. Yes, sir.

Q. You could take up another Company?

A. Yes, sir.

Q. They didn't have any power to force you to buy their drill, because you couldn't get another drill?

A. No, sir.

Q. In your judgment was the drills worth that what you sold for \$62.00?

A. When it comes down to what it cost to build it, I
257 couldn't say anything about that. But I suppose. I don't know how to answer that question, Mr. Bowman; I don't know what the article would be worth.

Q. Did you think you were getting the value for your money when you paid \$62.00 for the drill?

A. I suppose I did; or I might have tried to get something else cheaper.

Q. You didn't feel sorey then?

A. No, sir.

Q. You don't feel sore now about it?

A. No, sir.

Mr. CARROLL: We object to that.

The COURT: Sustain the objection, and tell the jury not to regard the answer.

Q. You were not dissatisfied about it then?

A. No, sir.

Mr. CARROLL: We object to that.

The COURT: Sustain the objection, and tell the jury not to regard the answer.

Redirect examination.

By Mr. CARROLL, of counsel for the plaintiff:

Q. You are in business, and you have to handle the line of drills your customers want?

A. We like to have the one that sells the best.

Q. The one the country has been in the habit of using?

A. Yes, sir.

(And further more the witness sayeth not.)

258 S. T. BUTTON having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. RICHARDSON, of counsel for plaintiff:

Q. Have you ever had any experience in farming?

A. Yes, sir.

Q. How much?

A. I was raised on a farm, and stayed there until I was twenty one years old. And I have been farming some in the last year or two.

Q. Are you engaged in that line of business now?

A. Yes, sir; I have a farm.

Q. What other business have you?

A. I am Sheriff of this county.

Q. How long have you been sheriff?

A. Two years and a half.

Q. Did you ever occupy any official position before you were elected Sheriff?

A. Yes, sir; I was Deputy Sheriff.

Q. How long?

A. Ten years.

Q. Ever have any experience with Wheat drills?

A. Yes, sir; some.

Q. How long?

A. Well I operated a wheat drill for two or three seasons I supposed when I lived on the farm, three or four maybe.
259 And I have helped operate one myself in the last two or three years.

Q. What drill do you operate now?

A. I have an Empire.

Q. Ever operate any other?

A. I have forgotten whether it was an Empire or a Superior I used before; one or the other.

Q. When was it bought?

A. About 1900 or 1899.

Q. How long was that one used that was bought in 1900?

A. Five or six years.

Q. How long have you had the one you now operate?

A. I have used it two seasons.

Q. How long?

A. I have forgotten whether I bought it in the Fall of 1910, or winter of 1911.

Q. Is there any difference in the durability of the machines, or the quality?

A. The old one lasted longer; and seemed to be a stronger and better drill. It didn't do any better work than the new one—but the new one hasn't lasted very long.

Q. What parts of it, if any—

A. It just simply seems to give away all over. It is weaker drafted.

Q. When did you say that was bought?

A. I have forgotten whether it was the Fall of 1910 or the winter of 1911.

Q. If any parts gave away first, which was it?

A. The fertilizer attachment.

260 Q. What next?

A. It got weak in the running gear too. The wood work give away in the wheels and the hubs. And the tongue broke out.

Q. How is the seed fed to the ground?

A. I never had any trouble with the seed feeder.

Q. How does it reach the ground, through hose?

A. Through steel hose.

Q. How have they lasted?

A. They haven't lasted. Haven't given satisfaction at all. I had to change them twice, I believe.

Q. What do you mean by changing them?

A. Had to get new ones.

Q. Has this one a fertilizer attachment to it?

A. Has, yes, sir.

Q. How is it?

A. It hasn't given satisfaction. It don't feed regularly. It operates, is regulated by a lever which changes the cups on the inside, and then it operates by a lever; it regulates the feed, it don't seem to change the feed like it ought to. It don't regulate it, I don't know what is the cause of it; but it don't do it.

Cross-examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. Of whom did you buy this drill?

A. The Barren County Grocery & Hardware Company.

Q. In Barren County?

261 A. Yes, sir.

Q. What member of the firm?

A. I don't remember now. I bought it from that firm.

Q. Do you know what year it was manufactured in?

A. No, sir; I don't.

Q. You don't know whether it was an old drill they had on hand for some time, or whether it come in from the Factory that season?

A. No, sir.

Q. Did you ever complain to them about these troubles of the drill?

A. No, sir.

Q. You never said anything about it?

A. No, sir.

Q. Do you know if the Factory furnishes articles, and if they are not satisfactory that they are pretty prompt to remedy the trouble?

A. I didn't make and complaint. I thought it was my bad luck and I went on and used it.

Q. When you got those new steel hose, did you have to pay for them?

A. Yes, sir.

Q. Didn't you ask to have them free?

A. No, sir.

Q. Didn't you know it was the custom of the Factory to furnish those parts free, through the dealer when they are defective?

A. No, sir.

262 Q. Were you dissatisfied with your purchase?

A. Well, it just seems to me that it hasn't lasted like it ought to.

Q. Is the drill in existence now?

A. It is on my farm in the country twelve miles.

Q. Are you using it?

A. Yes, sir; I used it myself three or four weeks ago. I used it on a little piece of land close to town.

Q. Have you been the only person using this drill?

A. No, sir.

Q. Who all has used it besides you?

A. My tenant on the farm has used it most of the time.

Q. Were you there when he used it?

A. Part of the time; I helped operate it some. He used it mostly in my absence.

Q. Anybody else operate it besides him?

A. I don't know. I wouldn't be there. I had a hand hired on the farm, one of them operated it.

Q. Was it operated on any other farms than yours?

A. No, sir; not with my knowledge or consent.

Q. Do you know whether it was done or not?

A. No, sir.

Q. How about this man that you had there; were you present when that was operated?

A. No, I wasn't there all the time.

Q. You don't know *how* that drill was operated?

A. No, sir.

Q. You know the question of the durability of a drill depends on the use of it; how it is treated?

263 A. Yes, sir.

Q. And on the sort of ground you undertake to cultivate with it?

A. Yes, sir.

Q. You couldn't very well draw a comparison between the two drills unless you knew how they were operated?

A. They were used on farms very similar in topography. They were not smooth level farms either one of them.

Q. Where did you keep the drill during the time you were not using it?

A. In the barn.

Q. It was not allowed to stand out all winter?

A. No, sir; I never saw it out.

Q. Do you know what exposure it had?

A. No, sir; but I am reasonably sure it never stood out though.

(And further the witness sayeth not.)

W. G. ELLIS having been called as a witness on behalf of the plaintiff, and having been first duly sworn and being examined, testified as follows:

Direct examination.

By Mr. RICHARDSON, of counsel for plaintiff:

Q. Where do you live, Mr. Ellis?

A. Down in the Bruce neighborhood; seven miles from here.

Q. What is your occupation?

264 A. Farming.

Q. Have you ever had any experience with wheat drills?

A. Yes, sir.

Q. What make or brand?

A. Superior, I believe.

Q. When was it purchased if you know, how many years ago?

A. We have been using them ten or fifteen years. I don't remember just how long.

Q. Have you had any experience with any other except that one?

A. No—Yes, sir.

Q. When was that one purchased?

A. Twenty five years ago; maybe more.

Q. Any other?

A. No, sir.

Q. Any been bought in the last year or two?

A. Yes, sir.

Q. What is that?

A. That is a Superior.

Q. Now tell the jury what the difference, if any, there is in the operation and durability of the machine bought ten or fifteen years ago, and the one bought a year or two ago?

A. What difference there is?

Q. Yes, sir; in durability, lasting and wearing, and operation.

A. I like the last one in some particulars better.

Q. What is the difference?

A. The last hose are the best.

265 Q. What are they?

A. Steel hose.

Q. Anything else?

A. No, sir; but I like some of the things about the old drill better than I do this one.

Q. Which is the more durable and lasting, from your knowledge and experience?

A. It seems to me like the old one was.

Q. Was there any part of the new ones that give out and failed to work?

A. Yes, sir.

Q. What were they?

A. The acre measure never did work.

Q. How many acres measures, if more than one, have you had with this machine?

A. I have used two; or tried to use two; never could get any of them to work.

Q. What was the matter with them?

A. They break.

Q. That this last one you have referred to?

A. Yes, sir.

Q. Which one cost more than the other and about how much?

A. I don't remember.

Q. Give your best recollection?

A. I don't remember the price.

Q. How much did this last one cost?

A. I just don't remember exactly what it cost.

Q. Who did you buy it from?

266

A. Bradford Brothers.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Mr. Willis, did you know that the acre measure had been something that had given some trouble on that drill and that they changed it so that it was remedied?

A. No, sir.

Q. Did you complain about the acre measure?

A. We got the second one and put it on; and it never did work, so we never did make any further inquiry about it.

Q. Did they charge you for the second or furnish it free?

A. Yes, sir; I think they did. I suppose I paid for it; or at least for one of them. We are without any now. I don't know we have had no talk about it.

Q. Do you know when the first broke they furnished you another one free?

A. Yes, sir.

Q. And now you have one?

A. No, sir.

Q. You haven't asked for another one, or it would be furnished free?

A. No, sir.

Q. Do you know whether they would do that or not?

A. No, sir.

Q. Do you know what their disposition has been in treating those kinds of defects?

Mr. CARROLL: We object.

Mr. BOWMAN: Withdraw the question.

267 Q. How long did you use the first one you bought, Mr. Ellis?

A. I suppose it has been used ten years.

Q. Then what became of it?

A. We still have it.

Q. You didn't sell it?

A. No, sir.

Q. Have it on the farm?

A. Yes, sir.

Q. Have you quit useing it now?

A. Yes, sir; it could be used now with some repairs.

Q. Have you bought another one, and you bought it largely because of the change there was in the conveniences about the drill?

A. My brother went and bought it; he didn't want to fool with fixing up the other one.

Q. You say you have had three all together?

A. Yes, sir.

Q. The second one was also used ten or fifteen years?

A. Yes, sir.

Q. This one has been used two or three years?

A. One year.

Q. You couldn't tell about this one until it has lasted ten years?

A. No, sir.

Q. You don't know?

A. No, sir.

Q. Barring the fact that you have had trouble with the
267a land measure?

A. Yes, sir;

Q. That is, the machine that drags along by the side of the drill and measures off the land for you to drive by the next time?

A. No, sir.

Q. It measures the number of acr-s you have sown?

A. Yes, sir.

Q. So it isn't a very material thing to get wrong and you could get along without it; and it wouldn't worry you much if you never had one?

A. I would rather have them.

Q. You as a farmer can pretty sure guess how many acres you sow a day?

A. Yes, sir.

Q. Especially after you have cultivated it?

A. Yes, sir.

Mr. CARROLL: Gentlemen, we will concede that it is entirely an unnecessary arrangement on the machine.

Mr. BOWMAN: Very well.

(And further the witness sayeth not.)

Court was here adjourned until One o'clock P. M. on the same day, and met at said time pursuant to said adjournment.

268 BRENTS DICKINSON having been called as a witness on behalf of the commonwealth and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By FRANK E. DAUGHERTY, Attorney for plaintiff:

Q. You live in Glasgow?

A. Yes, sir.

Q. And have lived here all of your life?

A. Yes, sir.

Q. What business are you engaged in?

A. In the Salt, Lime, Cement, and Fire Brick Business.

Q. Have you ever been in the market, Mr. Dickinson for scrap iron, bought scrap iron?

A. Yes, sir; during the last three years.

Q. Do you handle scrap iron now?

A. We buy it; we are not selling any.

Q. What is scrap iron worth now?

A. The best offer we have had——

Q. That is, what was it worth prior to November 16th, 1911; during the year of 1910 and 1911?

A. In 1910 the price was Fifty five cents.

Q. 1911?

A. In 1911 it was forty five cents to fifty.

(And further the witness sayeth not.)

269 S. M. DEARING having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows:—

Direct examination.

By Mr. BAIRD, of counsel for plaintiff:

Q. Your name is S. M. Dearing?

A. Yes, sir.

Q. Do you hold any Office in Barren county?

A. Justice of the Peace.

Q. How long have you lived in Barren county?

A. All of my life.

Q. Did you ever own a wheat drill of any kind?

A. Yes, sir.

Q. What kind?

A. Empire.

Q. When did you get it?

A. Last Fall.

Q. Where did you buy it?

A. Barren County Grocery Co.

Q. In Glasgow?

A. Yes, sir.

Q. Do you know anything about; have you ever used any other drill besides that at any time?

A. I never owned any one; I have used them.

Q. What time last Fall did you get it?

A. Well, I think it was in October.

Q. October, 1911?

A. Yes, sir.

Q. Did you ever use a drill other than that?

270 A. Yes, sir.

Q. How long ago, Squire?

A. I have been using them off and on for several years.

Q. What other make besides this?

A. I don't remember; I don't believe I ever owned one myself.

Q. You used one, the one you used belonged to somebody else?

A. Yes, sir.

Q. Do you recollect what other make?

A. I disremember now.

Q. Did you ever use an Empire, or a Superior, either of them?

A. Yes, sir; I have used *and* Empire.

Q. Did you use or know anything about either of those two machines, the Empire or Superior prior to 1903?

A. I have used them both before that, I think.

Q. Squire, from your knowledge of the machine you have, and those you saw prior to 1903, state in your judgment, from your knowledge, what is the difference, if any, between the make up, durability of those machines?

A. You mean in the way of lasty machine, the one that would be more durable or stand more?

Q. Yes, sir.

A. I think the old machine would stand more. This machine is much handier. Every year it is made so.

Q. Why do you think it would stand more?

A. I feel that it is made with better material.

Q. The old machine?

271 A. Yes, sir; but the improved is a good deal the handiest.

Q. What is there about it that is handier?

A. You don't have so much work about this machine.

Q. There is not as much machinery in this as there was in the old one?

Mr. BOWMAN: We object.

A. Yes, sir; I think there is as much, but yet it is changed from the old one.

Q. How long have you been using the one you say you bought it last Fall?

A. I have just used it last Fall and this Spring.

Q. In your judgment, from your knowledge of that machinery, and the one you bought last Fall, was it worth the money you paid for it?

Mr. BOWMAN: We object to that.

Q. What did you pay for it?

Mr. BOWMAN: We object to that.

The COURT: Overrule the objection.

Mr. BOWMAN: We except.

A. \$62.50 Cash.

Q. Now, in your judgment, was it worth that much?

A. No, sir; really, I think not, I think it was too high.

Cross-examination.

By Mr. BOWMAN, of counsel for defendant.

Q. Whom did you first talk to about your testimony in this case?

A. No one.

272 Q. You never talked to anybody before you went on the witness stand?

A. No, sir.

Q. Nobody at all?

A. No, sir.

Q. Never talked to the lawyers?

A. Some of the lawyers may have asked me some questions about something.

Q. Do you remember whether they did or not?

A. Yes, sir. I believe they did.

Q. When did they do that?

A. This morning.

Q. After you were subpoenaed here?

A. Yes, sir.

Q. Is that the first time you have been talked to about it?

A. Yes, sir.

Q. You give it as your opinion that you think that machine was too high?

A. Yes, sir.

Q. That you shouldn't have bought it?

A. I reckon I had to; it was as cheap as I could get it. They asked me \$67.50, but I got it for \$62.50.

Q. Did you try to buy it anywhere else?

A. No, sir.

Q. You didn't go elsewhere to see what you could get?

A. I know the price here in Glasgow on every machine. That was the cheapest; I couldn't get it that cheap anywhere else. They asked me \$65.00.

Q. Is it worth that to you in your business?

273 A. I hardly know.

Q. You couldn't do without it for \$65.00?

A. No, sir; I would have to pay it; I would have to have one if I sow grain.

Q. You couldn't have done without it for that money?

A. I am a little farmer, and a little one like me, I don't know whether I could or not.

Q. If you was a larger farmer you couldn't have done without it?

A. It might be that I could handle it better if I made lots of money.

Q. On such a small farm, you don't know whether you can or not?

A. No, sir.

Q. You are such a small farmer it is a close question whether you could afford to pay for a drill that price or not?

A. Yes, sir; I am a very small farmer.

Q. Your judgment as to the durability of this machine is not based upon practical use, because you haven't had it to test its durability?

A. No, sir; not really.

Q. You are judging from the appearance?

A. It will be easier broke than the other machine; it is a more tender machine.

Q. What parts appears to be more liable to break?

A. It is quite a lighter machine.

Q. Is it lighter in what parts?

A. The iron.

274 Q. The irons look lighter?

A. The cog wheels and so on.

Q. Do you know whether those iron parts are of gray iron or mal-able iron?

A. I do not.

Q. Do you know whether they were in the old machine?

A. I don't know anything about that.

Q. If the facts were that those parts are such parts, in the old machine were steel, and these parts of mal-able iron, and the ones in the old machine gray iron, would you know whether it would be stronger, altho they were lighter?

A. No, sir; possibly they might be as good.

Q. Do you know the difference in the strength between mal-able iron and gray iron?

A. No, sir.

Q. So far as you know, if they are mal-able iron, they are much stronger in proportion to the size than the gray iron; and they may have made the drill stronger, and still lighter by the substitution?

A. They may have done that.

(And further the witness sayeth not.)

Mr. CARROLL: We will close the case here for the Commonwealth.

The COURT: Very well. Call a witness for the defendant.

275 Mr. BOWMAN: We have some instructions we desire to offer.

Counsel for defendant here offered two instructions and asked the Court to give same to the jury, to which counsel for Commonwealth objected, and the Court sustained the objection, and refused to give either of said instructions, to all of which counsel for defendant excepted. (Said instructions as offered will be found on page 369 of this transcript.)

CHARLEY POWELL having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Where do you live?

A. In Glasgow.

Q. What is your occupation?

A. I am in the grocery business?

Q. How long have you been in that business?

A. Eleven months.

Q. What was your occupation before that?

A. For a year before that I farmed, and for ten or eleven years before that I was in the hardware business.

Q. For eleven years?

A. Yes, sir.

276 Q. You quit the implement business about how long ago?

A. About two years ago.

Q. When you were in the business, with whom were you connected?

A. Farmers Hardware & Grocery Company.

Q. What was your duties, did you have anything to do with the grain drill business?

A. Yes, sir.

Q. What grain drill did they handle?

A. They handled the Superior.

Q. What—during all of those eleven years?

A. Most of them; began handling them, that is the Superior drills in 1901. I believe it was. 1900 or 1901.

Q. Did they handle any drill before that?

A. No, sir.

Q. They started handling those drills at that time?

A. It wasn't the Farmers Hardware & Grocery Company at that time; it was Rogers & Hatcher.

Q. They handle the Superior?

A. Lane Smith & Wells bought their stock. Smith & Wells who succeeded Lane Smith & Wells.

Q. Are you familiar with the character and construction of the Superior drill that was furnished to you prior to the three years ago, when you were in that implement business?

A. Yes, sir.

Q. Have you recently examined the drill furnished in 1911, as to the character and construction?

A. Yes, sir.

277 Q. I wish you would state to the jury what you find in regard to those two drills, in comparing them?

A. I find quite a lot of improvements over the old drill, what they were back several years ago.

Q. State what they are, Mr. Powell?

A. They have a good deal better oiler on each disk; they have an oiling cup now with a screw in the place of a pin on the disk.

Q. Is there any additional expense in making that?

A. I would think so; a right smart difference.

Q. What else?

A. The wheels are six inches higher than they were then. And are a little heavier; in making the wheels six inches higher, they had to drop it, and make the drag bars and so forth lower on the front of the frame, and there are four or five hangers they had to drop them six inches, or the same distance they raised the wheels. And they have this fertilizer feed. It is different.

Q. What is the difference in the fertilizer feed?

A. I don't know what the name of the feed is; it used to *the* the Marks Force Feed. I don't know what the one is now. I guess it has about twice as much iron and cast as the old one. The old one was fastened in the fertilizer hopper so you couldn't get them out very easily. The ones in there now, the farmer can turn two or three set screws and take the whole inside of the fertilizer feed out and clean it off.

Q. Does it assist any in feeding the fertilizer into the ground?

278 A. I would think so; yes.

Q. Do you know in what way it helps in regard to that?

A. No, I don't know as it helps really in the feeding. It won't clog up as bad in those cones. It would in the old ones.

Q. Do you know whether or not it enables a different degrees or different quantities of fertilizer to be put in the ground; gives a wider range?

A. Yes, sir. It gives a wider range; that is, a large and small amount. I think the old one would feed some forty quarts to one hundred and twenty quarts; or eighty pounds to two hundred and forty pounds per acre. The one now gives about six hundred I think.

Q. Are there any other points of difference you recall?

A. Well, they have a better grass seeder attachment.

Q. What is the change in that?

A. The old seeder had a chain run from—just a small chain run on the inside, and stuck up by the box on this side; and on this side it just run around between the grass seeder, and worked the seed out through little holes. If the seed wanted to go out, it could go out, and if it didn't it could stay. The seeder now is a fluted force feed; and it cost a good deal more, I think. That is, it gives satisfaction, and the other didn't. There is a good deal more material in it.

Q. What effect has it had on the regularity of the seed?

A. It is bound to be more regular, because it forces the seed to the ground, the other would not.

Q. Is there any other change you noticed about it.

279 A. It has a better conducting tubes.

Q. What is the difference in those.

A. They have mal-able iron now. Part of the time; several years ago they had rubber, and then later they had a spring tube, it was

called a spring tube, it had two or three different kinds; they had the rubber, and the spring coil tube; it wasn't as good as it is now.

Q. Is there any other mal-able iron parts on the drill that were not on there then?

A. Yes, sir; they have places around the box under the fertilizer box—under the bottom of the box that fastens on the top and holds the box together, making it stouter. And the bed rais is double angle steel, where it used to be wooden red rail.

Q. How about the bood of the drill?

A. The boot?

Q. Is there any change in regard to the other pieces of iron up next to the disk, the drops between the iron and the disk?

A. Yes, sir; there is some difference in it; I never noticed all of the new drills, just how much difference there was in it. They have a good deal better scraper on the present drill than used to have.

Q. Is there any change in the head of the drag bar?

A. Yes, sir; they have mal-able adjustable drag bars heads, where they used to have straight cast drag bars.

Q. Rigid?

A. Yes, sir.

280 Q. How do you know this is mal-able iron and the other was cast iron?

A. It has a different look.

Q. Is there a difference in the appearance of cast iron and mal-able?

A. Yes, sir; there is a difference.

Q. So you can tell from an examination whether it is cast iron or not?

A. Yes, sir; Cast iron has a rougher look, and is more bumpy on the surface.

Q. More porous?

A. Yes, sir; more pores. More open.

Q. Do you know whether there is any difference in the strength between mal-able iron and cast iron?

A. Yes, sir.

Q. Do you know what it is; how much?

A. No, sir; I don't know. I know cast iron is easily broken and mal-able iron is not. I don't know what the difference is.

Q. Is there any other points about the new drill for 1911 that you noticed; How about the lever that extends from the rear of the drill?

A. They have a folding lever now, where they had a plain stiff lever before. It can be adjusted, and the lever used to be rigid; it now looks to be mal-able.

Q. Which of these two drills is the more valuable?

A. The new one; the drill that is made now.

Q. Would you feel able to give an estimate in dollars of how much more valuable?

281 A. As to what it cost, or should have cost the Factory. I have an idea about how much more it would be worth to the farmer. If the old machine and the new machine were put together—

Q. How much more do you think?

A. I think the average farmer would be willing to pay Ten or Fifteen Dollars more for the present drill than the older one. That is, most farmers. Of course there are some farmers who buy the cheapest thing then could get. But the majority of them would rather pay the difference and get the best.

Mr. CARROLL: We object to that answer and ask to have it excluded. As it is the witnesses opinion.

The COURT: Sustain the objection to that, and tell the jury not to regard it.

Mr. BOWMAN: We except to the ruling.

A. (Con.) I meant from my experience I have had in selling the farmers machinery.

Q. How much more, in your opinion is the new drill actually worth to the farmer, more than the old one?

A. I couldn't hardly estimate that, because some farmers are different.

Cross-examination:

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Powell, how many different kinds of machines have you used practically on the farm?

A. I have used but two, I believe.

282 Q. When?

A. I used one last year, or year before last; the Fall of the year before last; and I used one twelve years ago.

Q. What kind did you use twelve years ago?

A. Superior.

Q. Where is it now?

A. Out to my father's, I think, in the barn.

Q. Is he still using it?

A. No, sir; I don't think he is. It is a hoe drill. He bought it second handed; it was an old drill when he bought it.

Q. How old was it?

A. I don't know.

Q. Pretty durable drill?

A. Pretty well, some——

Q. And he used it for about twelve years?

A. No, sir.

Q. How long did he use it after he bought it?

A. Two seasons.

Q. You never used a disk drill did you?

A. Yes, sir; year before last.

Q. Was that the first time you used it?

A. Yes, sir.

Q. Do you know anything about the disk drill made eight, nine, or ten years ago, from practical experience?

A. No, sir.

Q. You were engaged in selling those machines?

A. Yes, sir.

282b Q. And of course, you were arguueing that they were better than the older ones, in order to sell them?

A. No, sir.

Q. Didn't you boost on your trade?

A. No, sir.

Q. Wasn't that part of it, the boosting?

A. We boosted it on its merits.

Q. You never had any practical experience in the manufacture of machines?

A. No, sir.

Q. You don't know what the various improvements you speak of cost?

A. No, sir; only by the repairs.

Q. Were they higher?

A. Not to say high.

Q. How did they charge by the piece, for repairs?

A. The piece of cast would sell for—The sprocket wheel would sell for twenty five, fifty or seventy five cents. They put on a better piece, I think it should be worth——

Q. How much more did they charge when the put on the other piece?

A. They didn't charge any sometimes; nothing that I remember of.

Q. Wasn't there an increase in the price of repairs?

A. It seems to me like there was.

Q. How much?

A. Maybe five per cent on a fifty cent piece; sometimes they were cheaper.

283 Q. What ones were cheaper?

A. I don't know what particular piece.

Q. Do or can you name any particular piece that was cheaper?

A. No, sir; I don't know as I can; because of the number of pieces.

Q. Five Per cent increase on a fifty cent piece would be ten cents increase?

A. Yes, sir; sometimes there would be a five per cent decrease.

Q. I mean five cents increase on the fifty cents piece would be a ten per cent increase?

A. Yes, sir. That is what I said; five cents.

Q. Tell me any one article that was five cents decrease on?

A. On corn drills some of the pieces.

Q. What character of material were they made of?

A. Cast iron.

Q. They reduced the price of cast iron five cents?

A. On some pieces.

Q. When was that?

A. About 1906 or 1905 somewhere along there.

Q. Other portions of this machine were made of cast; is there any portions of this machine now made of cast the ones you testified about?

A. I haven't noticed them.

Q. I am talking about the disk drills; has there been any decrease in the cost of repairs for disk drills?

A. I don't know.

284 Q. Have you any familiarity with the history of those machines, and machines of a similar character?

A. That particular line.

Q. On the harvester, binder, and machines of that kind?

A. Yes, sir; I have had experience along there.

Q. Don't you know it to be an historical fact that all of those machines when they were first introduced were rather of a crude nature, and heavy to some extent unweildy, having a great many more parts, and irons and material in them than they have now, and that after the machine became more efficient, the machine became smaller and less intricate, and the machines actually decreased in value; that binders were once \$250.00 and now are \$185.00 and don't you know that the sewing machine, when it first was put on the market sold for \$250.00 and you now can buy it for \$125.00; don't you know that to be an historical fact?

A. No, sir.

Q. Is that true or not, from your general knowledge?

A. It may be of sewing machines.

Q. Isn't it true of binders, and reapers and other character of machines, draft machines; all character of machines similar to this now under investigation?

A. No, sir; I don't know.

Q. You say it is not true?

A. I say I don't know. I know the machines are handled and sold.

Q. They kept going up in price?

A. They didn't get any less pieces or less complicated, 285 Drills didn't.

Q. They became less complicated?

A. No, sir.

Q. They are as complicated now as they were when they were first handled by your firm?

A. In some respects.

Q. And they are as difficult to manage?

A. No, sir.

Q. Did the prices decrease any?

A. No, sir.

Q. Do you know whether labor-saving devices, machinery become more numerous in the last years, and that there has been a constant improvement made in labor-saving machinery, and that by reason of that, those machines can be made cheaper?

A. No, sir.

Q. When you say this machine cost more, or less, you are expressing your opinion without any fact or experience to base it on?

A. I am expressing my opinion by what they cost the dealer.

Q. You are basing your opinion upon what the dealer paid?

A. Yes, sir.

Q. It has cost more to dealer; and you think if it cost more to the dealer it must have cost more to make it?

A. I think so; understand me——

Q. It has cost more, and you think is worth more?

A. They have more material in them.

286 Q. Do you know whether the material cost more or less?

A. Sir?

Q. What material is in there, iron, steel and so forth?

A. Iron, steel and cast iron.

Q. Do you know whether iron and steel and cast iron, or the raw material used which made them, is cheaper or higher than it was three or four years ago?

A. No, sir.

(And further the witness sayeth not.)

F. H. CASH having been called as a witness on behalf of the defendant and having been first duly sworn and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Were you subpoenaed for the Commonwealth?

Mr. CARROLL: We object to that.

The COURT: Sustain the objection.

Q. What is your business?

A. Farmer.

Q. Where?

A. Out here east of Glasgow.

Q. In Barrèn county?

A. Yes, sir.

Q. How long have you lived in Barren county?

A. About twenty five years.

287 Q. Do you use any drill in your business?

A. Yes, sir.

Q. What one are you using now?

A. Empire seed drill.

Q. When did you buy that, Mr. Cash?

A. I have had it ten years.

Q. Have you seen the new Empire Junior?

A. Yes, sir; I have seen it but I haven't paid any attention to it.

Q. You haven't examined it?

A. No, sir.

Q. You haven't taken care to compare it with the one you bought ten years ago?

A. No, sir; I haven't paid any attention to it particularly.

Q. You are not able to compare the machines furnished last year, with the machines furnished ten years ago?

A. No, sir.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

A. Where did you get the machine you got ten years ago?

A. Harrison, Depp & Holeman.

Q. It was a pretty good machine?

A. Yes, sir.

Q. You have been using it every since?

A. Yes, sir.

Q. It is durable?

A. Yes, sir.

288 Q. It does the work all right?

A. Yes, sir.

Q. What did you pay for it?

A. \$65.00.

Q. To the dealer here?

A. Yes, sir.

(And further the witness sayeth not.)

J. B. HATCHER having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. What is your occupation?

A. Well, I am in business in Glasgow Junction.

Q. In Your business there do you handle and Grain drills?

A. Yes, sir.

Q. What line?

A. Hoosier.

Q. How long have you handled it.

A. Two or three years; Two years, I think.

Q. Of whom did you buy it?

A. American Seeding Machine Company.

Q. Do you know whether other drills could have been bought of other people, if you had wanted to?

A. Yes, sir; there is others.

Q. What are they?

289 A. Well, I don't know that I know the names of them. I have had offers of others.

Q. Get catalogues from them?

A. Yes, sir; I got a catalogue not long ago of the Dayne, sold by the John Dear People.

Q. How come you — buy your drills from the American Seeding Machine Company?

Mr. CARROLL: We object to that, as incompetent.

The COURT: Sustain the objection.

Mr. BOWMAN: We except and make the following avowal. If permitted to answer witness would state that he bought of this

Company because its drills were regarded as the best, and he believed would be the easire for him to sell.

Q. Have you ever had any trouble with the drills from your customers?

A. No, sir.

Mr. CARROLL: We withdraw our objection to the former question.
The COURT: Very well.

Q. Read the preceding question to which objection was sustained. (Stenographer read said question to witness.)

A. Probably one thing their agent come along; and another thing none of the other machines have as good a sale; the name is familiar, and they are used in the country, and the people wanted that machine.

290 Q. Have you ever had any trouble with your customers, any of them to whom you have sold those machines?

A. No, sir.

Cross-examination.

By Mr. CARROLL, of counsel for the plaintiff:

Q. How many of them have you sold?

A. I have only sold two wheat drills.

Q. You know nothing about them yourself, practically?

A. Practically nothing.

Q. The agent came along and you took the agency?

A. Yes, sir; I have heard the farmers talk of the machine, and really, I think the first machine I sold, the man come to me and wanted to buy one.

Q. What were the machines listed to you by the agent of the American Seeding Machine Company at?

A. It was \$63.00.

Q. \$63.00?

A. At first, yes, sir.

Q. Which one was that?

A. The Hoosier.

Q. When was that?

A. Year before last.

Q. Did you buy any last year?

A. Yes, sir; \$65.00 last year.

(And further witness sayeth not.)

291 B. B. DUKE having been called as a witness on behalf of the defendant and having been first duly sworn and being examined, testified as follows:

Direct examination.

By Mr. PORTER, of counsel for defendant:

Q. Where do you reside?

A. Cave City.

- Q. What business are you engaged in ?
A. Hardware business.
Q. Do you handle drills?
A. Yes, sir.
Q. How long have you been handling wheat drills?
A. Seven years.
Q. What drill do you handle?
A. Hoosier and Superiro.
Q. From whom do you buy those drills?
A. American Seeding Machine Company.
Q. How many of the machines have you sold in the Cave City country, do you know?
A. I think something like sixteen or eighteen.
Q. Have you any experience, practical experience in the use of wheat drills yourself?
A. No great deal; no, sir.
Q. Have you heretofore, lived on a farm?
A. Yes, sir.
Q. What sort of drill did you use there?
A. Superior.
Q. Is the drill now sold different from the one used by
292 you on the farm?
A. Yes, sir.
Q. Could you tell the jury in what respects?
A. I don't know. There are several improvements on it. I don't know as I could name them, because I never looked at the machinery very much.
Q. Is this drill worth more or less, than the other?
A. I regard it worth a great deal more.
Q. Have the drills you have sold to the people in the country been satisfaction to them?
A. Yes, sir; as far as I know. I haven't heard any complaint.

Cross-examination. *

By Mr. CARROLL of counsel for plaintiff:

- Q. Do you know anything about the cost of those drills?
A. The cost of manufacturing them?
Q. Yes, sir.
A. No, sir; I do not.
Q. You have no knowledge of that matter at all?
A. No, sir.
Q. Do you know whether the improvements cost less, made the drill cost less than the drill did before the improvements?
A. No; I do not.
Q. They have increased the price, haven't they?
A. No, sir; not since I have been handling them.
Q. You say there has been no increase in the list price of the American Seeding Machine Company to you, on the Hoosier
293 and Superior in seven years?
A. I think not. If they have, I haven't noticed it.
Q. You have made a yearly contract?

A. Yes, sir.

Q. When did you make the contract for 1910?

A. Made it last Spring a year ago.

Q. When did you make the contract for 1909, the year ahead of that?

A. Hardly a year.

Q. Don't you know—To refresh your recollection, I will ask you if it isn't a fact that they increased the price two dollars on the machines from 1910 to 1911 trade?

A. If there was I never knew of it. There might have been some change in the discount; I don't think there was any change in the list.

Q. That is our experience?

A. Yes, sir.

Q. Who had charge of that business; have you a partner?

A. Yes, sir.

Q. Who had charge of that, you or your partner?

A. Our business is not large enough to have anything like that. We both take hold, and if I am there I sell and if he is there he sells.

Q. Do you remember whether you or your partner signed that contract for 1909 and 1910?

A. I don't remember about that. I generally sign the contracts.

Q. There has been no increase in seven years, according to your recollection, in either the Hoosier or Superior drill by the American Seeding Machine Company to you?

A. None that I recollect of.

Q. What did you pay for the eight disk drill with seeder attachment, and fertilizer attachment?

A. Less the grass seeder?

Q. With the grass seeder?

A. I believe it was listed at \$65.00.

Q. When was that?

A. It has been the price all along, so far as I remember, and I think \$2.50 for the grass seeder.

Q. \$65.00 and \$2.50 for the grass seeder?

A. Yes, sir.

Q. That makes \$67.50?

A. Yes, sir.

Q. That is the way it has been for seven years?

A. Yes, sir.

Q. Both the same price?

A. Yes, sir.

Redirect examination.

By Mr. PORTER, of counsel for defendant:

Q. Were there other drills on the market that you could have bought instead of these?

A. Yes, sir.

Q. How many different drills do you know of?

A. The Thomas, and another one or two if I could think of them. The Thomas is the only one that there has been
295 a traveling man there for the Thomas.

Q. Did you ever handle any other except the Hoosier and Superior?

A. Yes, sir.

Q. What?

A. Handled the Thomas some.

Q. Did you get circulars from other Machine Companies?

A. Yes, sir.

Q. You didn't care to buy these machines?

A. No, sir.

Q. You wasn't compelled to buy these machines?

A. No, sir.

Q. Why did you buy these in preference to the others?

A. They had best machine, I think. Took better care of the farmer.

Q. Have you got your contract with you?

A. With the American Seeding Machine Company?

Q. Yes, sir.

A. Yes, sir.

Q. The written contract?

A. No, sir.

Q. Have you got it for 1911?

A. Have I the contract with them for the year 1911?

Q. Yes, sir; the contract is in writing?

A. Yes, sir.

Q. Have you any of your contracts?

A. No, sir.

Q. You are only speaking from your recollection?

A. Yes, sir.

296 Q. Now you stated that there had been no raise in the price to you in the last seven years?

A. That is the way I remember it; there hasn't been any.

Q. The contract would show it?

A. Yes, sir; I think so; the price is on the contract.

Q. Wasn't there a raise of \$2.00 in 1911?

A. I don't know about that, if there was.

Q. If there was, you don't recollect it.

A. No, sir; I do not.

Q. Wasn't there a raise before that, in 1906 of \$4.00, 1908?

A. I don't know about that.

Q. And one dollar in 1906?

A. If there was these raises made——

Q. You have forgotten?

A. Yes, sir.

Q. Have you got your old contracts at home?

A. No, sir; I think not.

Q. Your attention hadn't been called to the question of whether or not there had been a raise when you come here?

A. No, sir.

Q. How many kinds of implements do you handle?

A. Wheat drills, Plows, of all kinds; Cultivators; Corn drills, and Harrows and some others.

Q. The implements the farmers need in the country?

A. Yes, sir.

(And further the witness sayeth not.)

297 CHARLES BORDERS having been called as a witness on behalf of the defendant, and being first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. What is your occupation?

A. Hardware business.

Q. Where are you located?

A. In town.

Q. With what firm?

A. Barren County Hardware Grocery Company.

Q. How long have y-u been with them?

A. Since, -95, 1905, I mean.

Q. What is their general business?

A. All hardware, farming implements, and field seed.

Q. Anything else except that?

A. All of that, and buggies and that line.

Q. Buggies?

A. Yes, sir; buggies and wagons.

Q. A large general stock?

A. Yes, sir.

Q. Do they handle grain drills?

A. Yes, sir.

Q. Which grain drills do they handle?

A. Empire.

Q. Any other?

298 A. No, sir.

Q. Have they handled any other during the five years you have been with the Company?

A. No, sir.

Q. Always handled the Empire?

A. Yes, sir.

Q. State whether or not there are other drills on the market of the same character, that you could have handled?

A. I reckon there is in the Hoosier line. They made a line of spreaders, I reckon we could have handled that.

Q. Are there any other makes of drill you could have handled except the Empire?

A. Yes, sir.

Q. What are they?

A. I reckon we could have handled the Thomas, the Mcsherry and some others?

Q. Any others?

A. No, sir; I believe not that I know of.

Q. Do you know any other drill makers in the country, who send their catalogues to you?

A. I noticed a few; I haven't paid any attention to it.

Q. You haven't been interested?

A. No, sir, I noticed the Thomas a good deal.

Q. In your trade in this drill, what is the transaction between you and the Seeding Machine Company; do you buy the goods straight outright?

A. Yes, sir; we buy them out right.

— On a written contract?

299 A. I think we generally make a contract with them.

Q. Do you know whether the contract is sent in to the Home Office for approval or not?

A. I don't remember about that.

Q. Have you had any trouble with any of your customers about any of these drills?

A. No, sir.

Q. Every any complaint about them?

A. Sometimes maybe some little thing will come up, but we generally fix it whenever it don't give satisfaction. We are back of them.

Q. Is there anybody back of you?

A. The Company makes it good.

Q. Do you remember selling a drill to the Sheriff of the County?

A. Yes, sir.

Q. How long ago?

A. I think it was last Spring a year ago.

Q. What was that drill?

A. It was an eight disk.

Q. What kind?

A. Empire.

Q. Was it that year's make, or an old one?

A. It had been a year or two back, and he come along in the Spring of the year and wanted a drill, and we had nothing but that drill. A fellow had carried it out and said it didn't give satisfaction, and brought it back, and I worked it over. I worked it over and saw that it was all right. Mr. Gee worked it over
300 there and said it was all right.

Mr. CARROLL: We object to what somebody told him.

The COURT: Sustain the objection, and the jury will not regard what the witness says somebody else told him.

A. (Con.) Mr. Button come to buy the drill, and I told him what kind of shape it was it, and told him if it didn't give satisfaction, it was our drill. He taken the drill and I haven't heard nothing from him since, until last Fall, he come in and wanted a piece or two for it, and I asked him, after that, I asked him how it—

CARROLL: We object to that.

The COURT: Sustain the objection.

Q. You say that drill had been sold once and the purchaser brought it back?

A. Yes, sir.

Q. Do you know what happened to it?

A. No, sir; it was all loose up, the hubs and bolts were all out, and I worked it over myself.

Q. Do you remember what price you sold it to him for?

A. \$50.00 I believe.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. How old was this drill you say, and——

301 A. It had been used about a year, I guess; it was put out somewhere three or four years ago.

Q. How——Put out in 1903 or 1904?

A. No; about 1908.

Q. It was about 1908 he got the drill?

A. Yes, sir.

Q. How long had it been used before Button got it?

A. It went out one Fall and he taken it the next Spring.

Q. It was out one Fall?

A. Yes, sir.

Q. It came back all racked up and no account?

A. Yes, sir; it had come to pieces.

Q. That was a regular Empire drill?

A. Yes, sir.

Q. Gotten from the American Seeding Machine Company?

A. Yes, sir.

Q. What did you pay for that drill from the American Seeding Machine Company, the usual price?

A. Yes, sir.

Q. It didn't last one Fall did it?

A. It didn't last; it come back.

Q. It came back the same Fall?

A. Yes, sir.

Q. It looked about as good as any of them?

A. It was all right, I guess when he got it at first; several come together.

Q. It had the same improvements on it as was on all of the Empires?

A. There was at that time; improvements over it now.

302 Q. You didn't answer my question, what did you pay for it when you got it?

A. I don't remember what it was.

Q. \$67.50?

A. No, sir.

Q. \$65.00?

A. About \$62.00 or \$63.00, I believe it was. Maybe it was \$61.50; right along there.

Redirect examination.

By Mr. BOWMAN of counsel for defendant:

Q. Have you any distinct recollection as to what you paid for that drill?

A. Yes, sir.

Q. You might be mistaken several dollars?

A. No, sir; I don't know what it cost.

Q. You spoke about this drill coming back all wracked up, what was the cause of that?

A. The way it had been treated.

Q. You say there are improvements on the drill now over what there were then?

A. Yes, sir.

Q. Tell the jury what the difference is now, in the Empire, it is now the Empire Junior?

A. Yes, sir.

Q. What is the difference in that drill they make now, and the one they made then?

A. The drills of about *four* years ago they had a little block axle, and once in a while it broke off; now it is a solid steel rod, the whole axle is fastened together.

303 Q. How have they improved the drill?

A. It is much better; it can't break now, the axle.

Q. Anything else.

A. No, sir; if it broke it all come off.

Q. Is there anything else about the drill that you have observed?

A. No, but there is a big change; but that is the biggest change.

Q. Do you know anything about the substitution of mall-able iron for cast iron?

A. I ain't posted on that much.

Recross examination.

By Mr. CARROLL of counsel for plaintiff:

Q. Have you had any practical experience in working with drills?

A. Yes, sir.

Q. When?

A. The last five or six years.

Q. On the farm or in the shop?

A. Some on the farm, before I went in the house.

Q. What did you use?

A. Superior.

Q. When did you get that Superior?

A. It has been ten years ago when it was bought.

Q. Ten years before you left the farm?

A. No, he has had the drill ten or twelve years now.

Q. Buy it new?

A. Yes, sir.

- 304 Q. Using it now?
A. Yes, sir.
Q. Doing good work?
A. Yes, sir.
Q. Is it a durable machine?
A. I guess so.
Q. It has been working for twelve years, every year?
A. Yes, sir.
Q. You fixed up that Empire machine before you sold it to Mr. Button?
A. Yes, sir.
Q. Made it as good as new?
A. I put in new bolts.
Q. You tightened it up and made it strong, about like it was when you got it?
A. Of course it wasn't as good as it was when it first went out; it was used some.
Q. Only difference was it had been used but one season?
A. It set out some.
Q. You took it up and fixed all of those things?
A. Yes, sir.
Q. And then turned it over to Mr. Button?
A. Yes, sir.
(And further the witness sayeth not.)

ELLIS BYBEE having been called as a witness on behalf of the defendant and having been first duly sworn and being examined, testified as follows:

305 Direct examination.

By Mr. BOWMAN, of counsel for the defendant:

- Q. What is your name?
A. Bybee.
Q. What is your occupation?
A. Merchant.
Q. Located where?
A. Here in Glasgow.
Q. What is the nature of your business?
A. Groceries and hardware.
Q. In that business, do you handle grain drills?
A. Yes, sir.
Q. What do you handle?
A. Hoosier.
Q. How long have you handled that?
A. I have been handling that since I have been in business. Twelve years, I reckon.
Q. How many?
A. Thirteen years.
Q. You are still handling them?
A. Yes, sir.

Q. Has there been any changes in the construction of that drill during the years you have handled it?

A. Yes, sir; there *has* been some changes made in them.

Q. Have you compared the present drill with the drill, say three years ago, and noticed the changes that have been made?

A. Yes, sir; I have noticed the changes.

Q. Have you made a careful examination to find all of them?

306 A. No, sir; I haven't.

Q. What did you notice?

A. In the last two or three years they have changed the fertilizer feed.

Q. In what way?

A. They have changed the feed from a disk feed to a cube feed, that is one change they made; and they have changed the drive of it, that is different; it used to be a chain, and now it is a sprocket disk drive on the axle.

Q. Which is better?

A. I think the present one is better.

Q. Do you know of any other change?

A. I know there are a number that have been made; there may have been some other changes made, but I haven't noticed them much; the box has been changed some, the seed box.

Q. Do you know in what respects?

A. They have changed the indicator; and the feed, I like that better than I did before.

Q. What is the change in the construction, what change in the construction did that involve?

A. I don't remember exactly. It used to be on the back of the box and now it is on the inside.

Q. Have you ever had any trouble with your customers in regard to the drill?

A. No, sir; I never did have a complaint of the Hoosier drill.

307 Q. During that time state whether or not there were other makes of drills, other than those made by the American Seeding Machine Company you could have bought?

A. We did buy one in 1906.

Q. What?

A. The McSherry.

Q. How many did you buy?

A. A car load.

Q. Is that the same drill called the—

A. Fetzer Company.

Q. Do you still handle them?

A. No, sir; we closed out about two years ago; it took us about four years to sell the car out, I think.

Q. Do you know the Thomas drill?

A. No, sir; I don't know much about it, I have seen it here on the market; I never paid any attention to it.

Q. You could buy that drill if you had wanted to?

A. Yes, sir; we have it offered to us every season.

Q. What other drill have you been offered?

A. We have had, I don't know the names of them; one by the John Dear People.

Q. Do you get catalogues from Drill makers?

A. Yes, sir.

Q. And advertise in the trade papers, they do, to call your attention to their goods?

A. Yes, sir; I see them in the papers. But they have written us personal letters in regard to them.

Q. What is the difference in the price you pay?

308 A. What do we pay for the drill now.

Q. The six by eight, do you buy that?

A. That is the drill we handle principally, the six by eight.

Q. The six by eight, and the eight by eight Hoosier?

A. Yes, sir.

Q. Have there been any changes in the price of that drill during the several years, last?

A. Yes, sir; a slight change.

Q. Do you remember what they were, and when each occurred?

A. No, I don't think there have been any to amount to anything. Hasn't been any change any very big change at all. But I think in 1910, was the first change in the price.

Q. Have you got your contracts for 1906, '7, '8, '9 and '10?

A. We have them; have some of them for those years.

Q. Do you remember there was a change in the price of two dollars for 1910, that is in 1910 for 1911?

A. Yes, sir; a change of two dollars then.

Q. Do you remember that previous to that there was a change of two dollars and four dollars?

A. An advance of Four Dollars?

Q. Yes, sir.

A. I believe from 1903 to 1906, somewhere along there there was a slight change.

Q. Wasn't there from 1903 to 1906 an advance of one dollar?

A. Yes, sir.

309 Q. And in 1908, there was an advance of Four Dollars?

A. About that time.

Q. Have you, at any time, bought of the Seeding Machine Company, during the year preceding November 16th, 1911, any goods at more than they were worth?

A. I don't think so. I wouldn't have bought them, if I thought it was more than they were worth.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Who fixed the prices of those machines?

A. They fixed their prices.

Q. You paid that price or you didn't get them?

A. Sure; they made the price, and we accepted it.

Q. What machine did you handle prior to 1903?

- A. The Hoosier.
- Q. Did you ever handle the Empire, before that time?
- A. No, sir; I handled the Superior.
- Q. What did you pay for the Superior drill prior to that?
- A. About 1900 I had a contract for the Superior, 1901 maybe. I don't remember the prices; it was a little higher I believe than the Hoosier, is my recollection.
- Q. What did you pay for the Hoosier in 1903 and 1904?
- A. My recollection is \$52.00 F. O. B. Louisville.
- Q. I mean with the grain attachment.
- A. The whole thing complete, the fertilizer attachment?
- Q. Yes, sir; for the six by eight?
- A. Yes, sir; F. O. B. Louisville.
- 310 Q. That is, you paid the freight from Louisville here?
- A. Yes, sir.
- Q. What was it?
- A. Four dollars and something.
- Q. Who pays the freight now?
- A. The Company pays it.
- Q. What did an eight by eight Hoosier cost, you, do you know?
- A. It was about \$60.00 I think; something like that.
- Q. Do you know what the Superior cost you?
- A. No, sir I don't remember the price of that?
- A. Did you pay the freight on the Superior?
- A. Yes, sir.
- Q. F. O. B., Louisville?
- A. Yes, sir; if we didn't buy a car load lot.
- Q. Suppose you bought a car load?
- A. They delivered them.
- Q. Is that true—
- A. We could have got them delivered in car load lots then, but we couldn't handle them.
- Q. The company pay- the freight?
- A. Yes, sir; we can get them now with another concern and ship from the same factory.
- Q. And make up a car load that way?
- A. Yes, sir.
- Q. If you get less than a car load you pay the freight?
- A. Yes, sir.
- Q. Isn't it \$62.00 F. O. B. Louisville, in small lots?
- 311 A. Yes, sir; \$52.00.
- Q. But in Car load lots you got them at \$52.00.
- A. I suppose they were the same price.
- Q. That was the six by eight; what did you pay for the eight by eight?
- A. Sixty Dollars, I think it was; Sixty or Sixty one or Sixty two.
- Q. In 1904 do you remember what you paid for the Hoosier six by eight?
- A. I don't think there was any change in 1904. Let me see. I have got the record, I looked it up for you people and you said

If I would get that up I wouldn't have to bring up the records, so I looked it up.

Q. All right?

A. In 1904, it was \$60.50.

Q. The eight by eight?

A. No, I never bought any eights in 1904.

Q. What did you buy for the \$60.50?

A. That was 1905, the \$60.50.

Q. What was that?

A. An eight by eight.

Q. In car load lots?

A. No, sir; F. O. B. Louisville.

Q. It was the same, but as I understand you if you buy less than a car load you pay the freight?

A. I don't know whether there is any difference or not.

Q. What did you pay for the six by eight in 1904?

A. \$54.00.

312 Q. What did you pay for the six by eight in 1905?

A. \$54.00.

Q. The eight by eight?

A. \$60.50. F. O. B. Louisville.

Q. What did you pay in 1906?

A. The eight disk \$60.00.

Q. What was the six disk?

A. \$54.00.

Q. 1907?

A. Six disk \$55.00.

Q. The eight disk?

A. The eight was \$65.50, but I believe that is—Yes, \$65.50.

Q. In 1907?

A. In 1908.

Q. What was the six disk in 1908?

A. \$65.50 is the way I got it from the record.

Q. What was it in 1909?

A. The eight disk?

Q. Haven't you got the price of the six disk in 1908?

A. No, sir; I didn't buy any of those six.

Q. What did you pay in 1909, for the eight disk?

A. I don't seem to have bought any in 1909.

Q. The six disk in 1909?

A. Didn't buy it either.

Q. 1910, what did you pay for the six and eight disk?

A. Paid for the six \$59.50, but that was less the discount; \$59.50.

313 They changed then and gave us a bigger discount, and one dollar off on ten and two dollars off on twenty.

Q. The six cost \$59.50?

A. Yes, sir.

Q. What did the eight cost?

A. \$65.50.

Q. Did you buy any Superior in 1903?

A. No, sir; I don't think we did.

Q. Have you any record of that?

A. No, sir; I don't look up the Superior because it was before the combine.

Q. Yes, I know it was before the combine, didn't you carry the Superior before the combine at all?

A. Yes, sir; I say I carried it before.

Q. What did you pay for it before that?

A. I haven't got any record; it was in 1900 or 1901, that we handled it.

Q. You don't remember what it was?

A. No, sir.

Q. Mr. Bybee, do you know anything about what the improvements cost, or the changes cost that you spoke of?

A. No, sir; I have no idea about that.

Q. You have no practical experience of that kind?

A. No, sir.

Q. It may have made the machine less costly than it was before, so far as you know?

A. No, I don't see how it could have made it any less cost, because it was made substantial and used good *good* material,
314 and the changes were all right.

Q. It was increased in efficiency, you think?

A. Yes, sir; I think so.

Q. Don't you know as a matter of fact that the universal history of this character of machinery has been, when it was first put on the market, to a certain extent it was crude, and in a sense inefficient, and it has been increased in efficiency, and the prices of the machines have been decreased, as illustrated by the prices of harvesters, mowers, and binders?

A. Harvesters, binders, and mowers run cheaper but they are not cheaper than they were eight or ten years ago.

Q. But I am saying when they were first put on the market?

A. Of course it is higher than it is afterwards.

Q. And as the efficiency is increased, hasn't the machine improved?

A. Yes, sir.

Q. And the price decreased for a number of years?

A. Yes, sir.

Q. Until about eight or ten years ago?

A. I don't know how long back.

Q. And the same rule with the sewing machine and the bicycle?

A. I am not familiar with the bicycle.

Q. Ever bought any sewing machines?

A. Yes, sir; I know they both are.

Q. And more efficient in some respects?

315 A. Yes, sir.

Redirect examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Where did you get that memoranda?

A. From the invoice.

Q. You made this at the request of the Commonwealth?

A. Yes, sir.

Q. You have the six disk fertilizer at \$52.00, f. o. f. Louisville, for 1903?

A. Yes, sir.

Q. And 1904?

A. \$54.00.

Q. Do you know whether at first there was with the grass seeder attachment, and the second without?

A. It might have been; I am not sure about that; I aimed to put the grass seeder attachment on. They were billed separate; that is the way it has been billed, separate.

Q. I wish you would examine your memoranda with care, and see whether the \$52.00 covers the grass seeder attachment?

A. I can do that.

Q. How long will it take you to do that?

A. It wouldn't take me long.

Q. The 1905 Fertilizer Disk you have \$60.50; do you know what that 50 cents represents there?

A. I don't know.

316 Q. You have, 1905, the eight inch disk fertilizer at \$60.50, and 1906 the same disk at \$60.00?

A. It might have been that I copied that wrong.

Q. Why would there be a difference of fifty cents between the 1905 and 1906?

A. I don't know; I don't think—

Q. You have got the price for 1905 higher than the 1906, and you haven't got the price at all for 1908?

A. Yes, I have for the eight disk, not for the six.

Q. You have the price for 1908 at \$65.50, and the 1910 price \$65.50, and the 1911 at \$67.50; do you know when there was an advance of Fifty Cents made for the grass seeder attachment; I mean made on the price of the grass seeder attachment?

A. I didn't pay any attention when the time was.

Q. That is on account of the grass seeder attachment?

A. Yes, sir.

Q. Do you know what year that advance went in?

A. No, sir.

Q. I wish you would look at your memoranda and see whether the price of 1903 is not without the grass seeder attachment?

A. Yes, sir; I will.

Q. Whether it isn't really the same price in 1904 as it is in 1903, one being without and one being with the grass seeder, and find the explanation of there being fifty cents more in 1905 than 1906 for that eight by eight drill, if you please?

A. Yes, sir.

317 Q. And if you can, see when the increase of fifty cents for the grass seeder attachment was made, when it was changed from \$2.00 to \$2.50?

A. I will look it up.

(And further the witness sayeth not.)

FRANK RICHARDSON, having been called as a witness on behalf of the defendant and having first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. PORTER, of counsel for defendant:

Q. Where do you live?

A. Here in town.

Q. What is your occupation?

A. Farming.

Q. How long have you been farming?

A. Fifteen years.

Q. During that time have you used any seeding machines, drills?

A. Yes, sir.

Q. How many.

A. Four or five.

Q. What kind were they?

A. I have used different kinds. I have got two Empires now.

Q. What sort did you use before that?

A. An Oswego, I remember that; and I think I had a
318 a Superior drill.

Q. How long have you had the two Empires you are using?

A. One of them two years and one four.

Q. Is there any difference in the construction of these new machines and the others you used, the Superior?

A. Yes, sir; they are more simple and easier to operate. There is less machinery about them. The old ones had about a bushel of cog wheels with them.

Q. How was the old Superior erected?

A. I think it was one of the first drills I bought. It worked with a lot of wheels to change the fertilizer and grain seeder, there was seven or eight or ten cog wheels.

Q. The two empires you now use, how do they work?

A. Change the feed with a lever, it is no trouble.

Q. Can you do it without stopping?

A. Yes, sir; instantly.

Q. Have they got a seed attachment to them?

A. Yes, sir; grass seeder.

Q. Fertilizer?

A. Yes, sir.

Q. Seed drill?

A. Yes, sir.

Q. The drills you have got now worth more or less to the farmer?

A. I consider them worth more; they are so much easier to operate?

319 Q. How much more?

A. I would think it was owing to how much a man had to use them. Somewhere from five to ten dollars, they would be. They are worth two or three dollars a season to me.

Mr. CARROLL: We object to what they are worth to him.

The COURT: Sustain the objection.

Q. Do you use them extensively?

A. Yes, sir; a right smart.

Mr. CARROLL: We object to the question and answer.

The COURT: Overrule the objection.

Mr. CARROLL: We except.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. They are considerably less complicated, those new machines?

A. Yes, sir; less machinery.

Q. Less machinery?

A. Yes, sir.

Q. Lighter weight?

A. I don't know whether they pull heavier or easier. You mean weigh less pounds or pull easier?

Q. Weigh less pounds?

A. I couldn't tell.

Q. Do they pull easier?

A. I rather think they do.

320 Q. There is less material in them, caused by their being less wheels, and they are less complicated?

A. All of the wheels come but you just use one at a time when you want to change, you have to change the cogs, in the old machine.

Q. Of course you don't know whether they cost, or whether those changes made it cost more than the old one or not?

A. No, sir; I don't know.

(And further the witness sayeth not.)

B. J. WESTCOTT having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. What is your occupation?

A. I am Treasurer of the American Seeding Machine Company.

Q. How long has that been your business?

A. Since 1903, March.

Q. Has it been the same Company during the entire period?

A. Yes, sir.

Q. Same Company now as it was in 1903?

A. Yes, sir; well the Corporation was changed from New Jersey to Ohio.

321 Q. What was your occupation prior to 1903?

A. Secretary & Treasurer of the Hoosier Drill Company of Richmond, Indiana.

Q. How long had you been occupying that position?

A. I would say three or four years prior to 1903. Probably since—Well, longer than that. I was Secretary from 1893, and Secretary & Treasurer from about 1900.

Q. How long has the Hoosier Drill been made in the United States?

A. I think in the Sixties; 1860 something.

Q. Who began to manufacture that drill?

A. I have forgotten.

Q. Was your father connected with that?

A. From 1873.

Q. In the organization of the American Seeding Machine Company, of New Jersey, what was the Capitalization of that Company?

A. Seven Million, Five Hundred Thousand Dollars of Preferred Stock, and Seven Million, Five Hundred Thousand Dollars of Common, authorized.

Q. How much Preferred was issued?

A. Six Million and Thirty Four Thousand Dollars.

Q. What was done with that stock?

A. That was paid to the combined Companies forming the American Seeding Machine Company, the Superior Drill Company and the others—That is what was paid to the Stock holders of those companies.

Q. In exchange for what?

322 A. Their properties and assets and business.

Q. How did the value of those assets compare with the Preferred stock issued for them?

A. It was of like value.

Q. Was there any Common stock issued in regard to the preferred stock?

A. Yes, sir; a like amount.

Q. Was there any further consideration for the Common?

A. No, sir.

Q. Was any of that Preferred stock of the New Jersey Corporation issued, except what was issued for these properties?

A. No.

Q. At no time?

A. Yes; subsequent to the Formation of the Company, some of the stock was sold to outside people.

Q. How much in amount of the Preferred Stock of the New Jersey Corporation was issued, beyond the Six Million Thirty Four Thousand Dollars, that was issued for the property?

A. There has been a total issued—You are referring to the New Jersey alone?

Q. Yes, sir?

A. Three Hundred and some odd thousands.

Q. Three Hundred Thousand Dollars above the amount issued to them?

A. Yes, sir.

Q. What consideration was received by the New Jersey Company

323 for the excess of Preferred stock you have referred to, this Three Hundred Thousand Dollars?

A. It was sold for cash to investors.

Q. At what rate?

A. Par.

Q. What became of the proceeds?

A. It was invested in the business.

Q. Was there any common stock issued in connection with that preferred stock that was sold?

A. Yes, sir; the same amount.

Q. Was there any consideration acquired for that Common stock, in addition to the money paid for the Preferred?

A. No, sir.

Q. When was the Ohio Corporation formed?

A. March 20th, 1906. It began business April first, 1906.

Q. How was its Capital arranged?

A. Its Authorized Capital was Two Million Five Hundred Thousand Dollars of Preferred, or Five Million less than that of the New Jersey Company; and Five Million common.

Q. How was that stock disposed of; or what stock disposition was made immediately after the organization of the Ohio Company?

A. At the time of the change from the New Jersey to the Ohio Corporation, there was outstanding of the New Jersey Preferred stock, Six Million Four Hundred and Sixteen Thousand Five Hundred Dollars, of the New Jersey Stock.

Q. Six Million and what?

A. Six Million, Four Hundred and sixteen thousand, five Hundred Dollars; and the same amount of common. The assets of the
324 New Jersey Company were transferred to that of the Ohio Company in consideration of \$5,000,000 Common stock and \$1,416,500 Preferred Stock, six per cent preferred. That made a total of the issued of the Ohio common and Ohio preferred \$6,416,500, or exactly the amount of outstanding New Jersey Preferred Stock.

Q. So the New Jersey preferred stockholders received part in preferred stock, and part in Common Stock at par, for the par value of the New Jersey Preferred stock?

A. Yes.

Q. What did they get for their New Jersey Common stock?

A. Nothing.

Q. What became of it?

A. It was surrendered without consideration.

Q. The authorized issue of \$5,000,000 Common?

A. Yes, sir.

Q. And the authorized issue of the Preferred was \$2,500,000?

A. No.

Q. How much?

A. \$1,416,500.00.

Q. How much of that preferred stock has been issued?

A. The whole amount and the residue of \$1,083,500.

Q. What consideration did the Ohio Corporation receive for that additional Preferred Stock that has been issued?

A. It was all sold at par for cash. The proceeds invested in the business.

325 Q. So that since the combination was formed by the organization of the American Seeding Machine Company of New Jersey how much money in cash has gone into the business from the sale of additional stock?

A. The original issue was \$6,034,000, that would be \$1,466,000.

Q. It would be the excess over the New Jersey preferred?

A. \$1,466,000.00.

Q. Now, what other additions to the Capital invested in the business have been made since the organization of the New Jersey Corporation, if any?

A. There was some earnings left in the business.

Q. How much would they amount to, since the organization of the New Jersey Corporation?

A. Up to what date?

Q. Up to what date did you estimate?

A. Up to the close of 1911.

Q. Very well?

A. Approximately \$1,660,000.00. I think \$1,621,000.00 was the surplus of the Company. I would like to have the privilege of correcting that, if it is not correct.

A. In the transaction of the Brennan Company Southwestern Agricultural Company, at Louisville, Mr. Munn testified in regard to that, the debts of that company; what was the transaction of the American Seeding Machine Company in regard to the debts of the Louisville Company?

A. The receivables, accounts, notes owing to the Kentucky Drill Company, or the Brennan Company Southwestern Agricultural Works, and the same applied to the other Companies.

326 The receivables were turned over to the new organization for collection. The liquidation of the then outstanding indebtedness of the respective Companies; the residues, if any, of the net cash proceeds of the collection were to be paid to the stock holders of those companies in preferred and Common stock of the New Jersey Company. That is, the preferred at par with a bonus of the Common.

Q. Can you furnish a statement of the financial operation of the Company since its organization, showing its operation, right through from the New Jersey over to the Ohio, without break, showing the result of the financial operation?

A. Yes.

Q. I wish you would do so?

A. I will.

Q. How many stock holders are there in the American Seeding Company, or about?

A. I can't answer that definitely, Mr. Bowman, but I would say approximately six hundred.

Q. Where are they located?

A. They are pretty widely scattered. I would say that naturally from the location and ownership of the combined Companies entering into the American Seeding Machine Company. Of course that stock has been distributed by the respective Companies to their respective stock holders, and through various ramifications, I presume it has gone pretty generally over the country. Quite
327 a number of states.

Q. Take up that financial statement, Mr. Westcott, and what does it show the topics it covers?

A. It shows the gross sales for each year from 1903 to 1911, both inclusive. It shows the gross manufacturing revenues; the expenses, and the net revenue. And there are deductions of reserves and deferred charges, giving the net gain. There is the deduction of the dividends leaving the surplus for each year; which is taken cumulative; so taken through, shows the accumulations for the entire time.

Q. What other statement is there on there; the earnings and dividends?

Mr. CARROLL: Do you propose to introduce this statement and make it a part of the record?

Mr. BOWMAN: Yes, sir.

Q. What else have you put on that sheet?

A. I have tabulated there the summary of earnings for the respective years, showing the total, and average. Also a summary of the dividends disbursed, and an average for each year.

Mr. BOWMAN: I want to offer that sheet in evidence.

The COURT: Very well.

(Marked Exhibit "A"D.") (See page 338 of this record.)

Q. Now that revenue from sales includes the gross manufacturing revenue?

328 A. Yes, sir.

Q. Is there any other source of revenue?

A. No, sir.

Q. It has no investments?

A. No sir.

Q. So that is gross revenue also?

A. Yes, sir.

Q. The expenses; what character of expenses, the expenses cover all of the expenses excepting the things that are in the column of reserve and preferred charges?

A. Yes, sir.

Q. Take the reserve and deferred charges for 1911 and analyze that?

A. \$199,280.02.

Q. Was that——. What does that consist of?

Mr. CARROLL: Have you more than one copy of that?

WITNESS: Yes, sir.

Mr. CARROLL: Would you let me have that copy?

WITNESS: Yes, sir; I will be glad if you will follow it.

A. That consists of the reserve for the adjustment of transfer stocks. That is, goods shipped to Canada or various points, which was credited to manufacturing operations, at sales prices. But at the close of the year, of the fiscal year it was found that upon an inventory of those accounts, it was found that the accounts had increased at sales prices during the year. That is the stock of 329 goods in transfer had increased \$124,000.00, and the reserve for \$49,280.00 was set up to reduce the excess sums during the year, say \$124,000.00 to the inventory value. Had we not done that, we would have shown a fictitious profit of \$49,000, upon goods charged to — I mean shipped to Canada and other distributing points.

Q. As tho they had been sold?

A. Yes, sir; at the close of the season. At the close of the season, that is the reason that amount of goods is carried over, and the value is subject to reduction.

Q. That is how much?

A. \$49,280.02. And the reserve for depreciation of plant machinery and equipment is \$150,000.00. for the year. A careful account was kept of repairs, replacements, and renewals during the twelve months which amounted to \$137,541.00, which was immediately charged against that \$150,000.00 set up for that reserve purpose; so regardless of the earnings, the gross earnings, that amount really could have been properly deducted before.

Q. That left a balance of that \$150,000.00?

A. \$12,458.48.

Q. What is that?

A. That went to the fixed plant depreciation.

Q. Have you got a table showing a similar analysis of each reserve and deferred charges?

A. For all of the years?

Q. Yes, sir.

A. Yes.

330 Mr. BOWMAN: I want to offer that in evidence also.
The COURT: Very well.

(Said paper is marked "Exhibit A. G." See page 339 of this record.)

Q. The New Jersey Preferred stock bore a dividend of seven per cent, was that dividend paid so long as the stock was outstanding?

A. It was paid from August. Began August first, 1904.

Q. Have you got a copy of the dividends?

A. Yes, sir; I have that here. There were two quarterly payments, paid in 1903, and three quarterly payments made in 1904, of $1\frac{3}{4}$ per cent each that would be $3\frac{1}{2}$ per cent in 1903, and $5\frac{1}{4}$ per cent in 1904.

Q. $1\frac{3}{4}$ per cent each?

A. Yes, sir.

Q. Does that account for all of the dividends shown to be paid there \$334,412.16?

A. Yes.

Q. Was there any dividend paid on that preferred stock in 1905?

A. No.

Q. It was surrendered in the year 1906?

A. Yes, sir.

Q. What dividend did it receive in 1906?

A. Received, in 1906, January 15th, and at the time of the transfer of the Company, April first, from New Jersey to Ohio; it was subject to the *then* declared dividend payable April 15th, so the New Jersey Stock received a dividend January 15th of 331 one per cent and April 15th, 1906 one per cent; so it received two per cent in 1906 on the New Jersey Preferred

Stock.

Q. For the portion of the year?

A. Yes, sir.

Q. It was exchanged for the six per cent Ohio Stock?

A. Yes.

Q. What has been the history of the Company in regard to paying its dividends on that six per cent stock?

A. It has been paid continuously without inter-uption the Preferred stock.

Q. What dividend did the Ohio Company pay on its Common stock?

A. It paid——

Q. And when were they paid?

A. Well they were——

Q. Pay any dividends in July, 1906?

A. July 15th one per cent; October 15th, 1906, one per cent.

Q. How about 1907?

A. In 1907 it paid one per cent, January 15th; one per cent April 15th; one per cent July 15th; and a half a per cent October 15th, 1907.

Q. Three and a half per cent?

A. Yes, sir.

Q. What did it receive in 1908?

A. None.

Q. What in 1909?

A. None.

332 Q. 1910?

A. None.

Q. 1911?

A. Four per cent.

Q. What per cent, Mr. Westcott, of the net gain, as given on the statement which is net book profits of the year, is available for dividends in a manufacturing Corporation of this kind?

A. That would depend, and be governed largely by the growth and business of the Company. If the Company was, or its business was increasing, and its investment in manufacturing requirements,

and in outstanding accounts and notes receivable, on accounts of its increased sales, it naturally would increase its working capital, and the declaration of dividends would be governed more or less, and should be governed largely by the amount to be spared from its required working capital for the business done. The history of our business of that period shows that of the actual net earnings as shown, which are an average of \$363,000.00 per year, there has been declared dividends of \$184,000.00 per year, or approximately fifty per cent.

Q. Of the average net book earnings?

A. Yes, sir.

Q. What does the American Seeding Machine Company, in the conduct of its business carry in accounts, bills receivable, accounts and notes?

A. An average you mean?

Q. Yes?

333 A. About Three Million Five Hundred Thousand Dollars.

Q. Is there any apparent per cent of the gross sales that is carried in bills and notes, as a rule?

A. Our records show approximately seventy per cent. That would be approximately seventy per cent.

Q. Seventy per cent of the gross sales of the Company?

A. Yes, sir.

Q. Carried at all times?

A. Sometimes it is a little less and sometimes more.

Q. Some are collected, and some others come in and take their place?

A. Yes, sir.

Q. I notice the volume of the business of the Company has increased from \$3,000,000.00, practically in 1905 to \$4,500,000.00 nearly \$5,000,000.00 in 1911, what has been the cause of that growth, and the increase in the sales of the company?

A. That is rather difficult to answer.

Q. In a general way, how has it been brought about?

A. I think in any successful business, there should be a natural growth, and if it should continue to be successful, it would continue to grow. It either goes up or down. Probably we were more energetic, on account of more experience, and in the sales department; and the sales organization; and from general improvement of the product. And to some extent the territory it has covered and many additions.

Q. Has there been any increase in the use of seeding machines among the people of this country, the use to which they can be put?

334 A. Yes, sir; I think so.

Q. What volume of business is it necessary for the American Seeding Machine Company to do to come out even?

Mr. CARROLL: We object to that.

The COURT: Sustain the objection.

Mr. BOWMAN: We except.

Q. I notice in 1908 the company did a business of practically Two and a half million dollars, and then lost \$93,000.00, without having anything for depreciation, or setting anything aside for reserve; what was the occasion of that?

A. The volume of business was so reduced, that the gross revenue was less than the fixed charges and expenses.

Q. How much gross revenue is necessary to prevent an actual loss in the conduct of the business, the fixed charges?

Mr. CARROLL: We object to that; I suppose it depends on the amount invested.

WITNESS: It depends, judge, upon the amount of your expenses.

The COURT: Overrule the objection.

Mr. CARROLL: We except.

A. May I answer that as applied to 1911, as illustrative?

Q. Yes, sir.

A. Because it would vary with each year.

Q. Yes.

A. In the year 1911, there would have been approximately Three Million Dollars—

335 Q. Why does it vary in each year?

A. It varies with the expenses, Mr. Bowman, and almost directly. If we expect to increase our business Five Hundred Thousand Dollars, it would incur an expense of One Hundred Thousand Dollars, or twenty per cent the first year. That example nearly illustrates it. If we fail for some reason, either within our own responsibility, or beyond it, the business should not be up to our expectation; so that the territorial and sales expenses, would have been expended, but the volume of business, having been reduced; in other words there would be a loss of One Hundred Thousand Dollars, if we did not get the Five Hundred Thousand Dollars of business, or any part of it.

Q. Suppose the conditions were the same in 1912, so far as the expense proposition is concerned, and you were doing business, and the result of the year would show the gross sales of Three Million Dollars, instead of Four Million Five Hundred Thousand Dollars, what would be the effect upon the company?

A. I think the Company would show a loss for the year.

Q. If one man is equipped to do one hundred thousand dollars' worth of business, and another one is equipped to do one Million Dollars Worth of business, and each of them happens to do One Hundred Thousand Dollars' worth of business, which would make the money?

Mr. CARROLL: We object to the question.

The COURT: Overrule the objection.

Mr. CARROLL: We except.

336 A. Of course the Company with the Hundred Thousand Dollar Capacity and did the Hundred Thousand Dollar business would be operating under ordinarily profitable conditions and it would be natural for it to make money. If the concern had a

capacity for One Million Dollar Business, and only did One Hundred Thousand Dollars' worth of business, the loss, of course would be great, that is apparant.

Q. How much, Mr. Westcott has been added by this Company the American Seeding Machine Company, including the — to plant additions?

A. Approximately Twelve Hundred Thousand Dollars, in material.

Q. Expended in new plants?

A. In land, buildings, machinery and equipment.

Q. Does that include what was expended for repair and renewals of the existing machinery?

A. No, sir.

Q. That is an annual expense?

A. Absorbed each year.

Q. Have you figured what the result would be of applying to the business done in 1911, the prices which prevailed in 1904?

A. Yes.

Q. I wish you would state what the result would be?

A. I took the number of machines of the various types with their average advance of price, and deducted that from the earnings as shown in 1911, and it would have made a difference of over Four Hundred Thousand Dollars.

337 Q. Can you state exactly the amount.

A. \$436,000.00.

Q. The gross earnings were \$638,000.00?

A. Yes, sir.

Q. That left a balance of practically \$200,000.00

A. \$202,000.00 would have been our profits on the 1911 business, if it was done at the 1904 profits.

Q. In those 1911 profits, were there the profits from the Mast building acquired?

A. Yes, sir.

Q. How much from that?

A. It is a little difficult to give that accurately, Mr. Bowman, in view of the merging of the expenses of the Buckeye Sales and the Superior sales.

Q. And that would have left a book profit of \$200,000.00 as the annual rate on the \$6,000,000.00 practically, of property invested?

A. Sir.

Q. There was a million and a half property invested, and the surplus and the capital, and how much cash?

A. \$1,466,000.00.

Q. How much was the amount invested in the business in 1911, in all?

A. About \$9,000,000.00.

Q. That profit, or net gain shown on the statement of \$638,815.00 is that money?

A. I regret to say it is not.

Q. What would be the fair money value of that profit shown of \$638,815.00?

338 A. Well, it is rather difficult to answer that. Of many of those notes and accounts may be uncollected for five years from now. And on the other hand, a large portion of them, of course will be paid up. But the accounts, many of the notes and accounts, the accounts practically all, are carried without interest, and the notes, many of them without interest. So it would mean then what would it be worth to immediately cash in. I would say that would be, we would very gladly take Five Hundred Thousand or Five Hundred and Fifty Thousand dollars, and have the money in the bank to our credit to use.

Q. Do you know what per cent of the sales price in the conduct of your business is applied to the factory cost and production of goods?

A. Yes.

Q. What is it?

A. It varies slightly between the different factories from year to year; but I will average it; approximately the factory cost averages sixty per cent; approximately.

Q. Leaving forty per cent of the selling price of goods?

A. Yes, sir.

Q. What becomes of that?

A. It becomes absorbed in advertising, salaries, traveling salaries; traveling expenses; freight delivery of goods to transfer houses over the territory where we make delivery to the transfer houses; taxes, insurance, and all expense items.

Q. Cash discounts?

339 A. Yes, sir; settlement allowances; rebates, I mean by rebates, our goods are billed figured at the price of the season, but if a man bought twenty drills, he would get a reduction of two dollars per drill on the twenty, drill; that allowance aggregates to a large amount.

Q. If you do the business you expect to do, lay the foundation for, and are not disappointed in the volume of business, what per cent of the sales price is profit?

A. I would say ten or twelve per cent in the net gain. I am speaking, not upon the capital invested, but upon the gross of the volume of business.

Q. Ten per cent of the gross volume of business?

A. Yes, sir; on the sales, ten or twelve per cent.

Q. What has been the experience of the Seeding Machine Company in regards to marketing the goods, and conducting that portion of the business, the manufacturing of the drills, and whether it has been increased or decreased?

A. It has been largely increased.

Q. From what cause?

A. Incident to the larger volume of business, the expenses generally have increased; and the same thing obtains in the labor of the factories; and it obtains to the labor in the office and the men upon the territory; hotel expenses, livery hire, and their salaries. I think the same relative proportion of increase has taken place in the office and the sales expenses as has in the factory expenses.

Q. How many salaried officers in your Company?

340 A. Four.

Q. What is the aggregate of their salary?

A. Thirty Thousand Dollars.

Q. Are those salaries the same, greater, or less than they were in 1903, when the Corporation was first organized?

A. Little less.

Q. What has been the history of those salaries?

A. The salaries were fixed upon the formation of the Company at the first meeting of the Board of Directors for the year 1903, which was on March, 1903. At this meeting, and continued until November 1st, 1903. And at the close of that fiscal year, the result of the year's operation had not been entirely satisfactory; our expectations hadn't been realized, and the Officers, or the Executive Committee, comprising the Officers reduced their own salaries twenty five per cent. And that reduction has never been fully restored.

Q. Did the combined Company of 1903, or has it at any time since, had control of the drill trade, and enabled to raise the prices of drills beyond their real value?

A. No, sir; certainly not.

Q. There have been offered some reports to the Secretary of State, with reference to appointing Mr. Rogers as Agent for this Company in the state of Kentucky, did you make those reports?

A. Yes, sir.

Q. Did you at the same time make a report to the Auditor of Public accounts, as required by law?

341 A. Yes, sir.

Q. I will ask you if those are certified copies of such reports for the years, 1910, and 1911?

A. Yes, sir.

Q. You have certified copies of those reports?

A. Yes, sir.

Mr. BOWMAN: We desire to offer those in evidence, if your Honor please.

Mr. CARROLL: If your Honor please, we object to the introduction of those reports in evidence, because they are incompetent and irrelevant. There is no objection made to any defect, if any, in the certificate.

The COURT: Let me see them.

Q. Here are these reports filed with the Auditor of Public Accounts of the State of Kentucky, were they filed at the same time as the report that has been offered in evidence was filed with the Secretary of State, appointing Mr. Rogers as State Agent for service in your Company in Kentucky?

A. Yes, sir; the only report we file. It was put in there for a designation of an office.

The COURT: I sustain the objection to the filing of the reports above offered to be filed.

Mr. BOWMAN: To which we except.

(Said reports are marked respectively exhibits "C. Y." and "Z. X." See page 340-7 of this record.)

342 Q. Have you a statement, certified copy of a statement of the Corporation which appears to have been made to the Secretary of State, January 14th, 1909, signed by Mr. Bookwalter, Secretary, or by Mr. Bookwalter President, and by yourself as Secretary of the American Seeding Machine Company appointing George D. Rogers, of Louisville Kentucky as Agent in Kentucky for service and also the condition of the Company's business, as to manufacturing or not in Kentucky, at the time that statement was filed, do you remember whether or not; or do you remember when the manufacturing at Louisville was suspended?

A. July, 1908?

Q. July, 1908?

A. Yes, sir.

Q. That was then filed after the manufacturing business ceased?

A. Yes, sir; I think so.

Q. Were there filed with that — the same time a statement to the Auditor of Public Accounts, a report?

A. This is not a copy of the one we filed, as I understand it.

Q. It is a certified copy by the Secretary of State?

A. Yes, sir; I guess it is; but it is in a different form from what I remember.

Q. How long previous to that year had you been doing business in Kentucky in the way of manufacturing?

A. From March 1903, up to the discontinuance of the manufacturer of the Kentucky drill at Louisville.

343 Q. Did you file such a statement during each year, during the time you were manufacturing in Kentucky?

A. Yes, sir.

Q. And filed it January 1909, after you ceased manufacture?

A. Yes, sir.

Q. Did you file such a statement as that in 1910?

A. Yes, sir.

Q. As that?

A. This copy, Mr. Bowman. I don't understand from that. My recollection is *it* was an annual report required, referring to our designated agent.

Q. Is the paper here referred to as exhibit "Y", the paper you remember as filing in the year 1910?

A. Yes, sir; that is the one.

Q. I will ask you if any such paper as the one that has been admitted in evidence and marked "A" was filed in 1910 to the best of your recollection?

A. I have no recollection; but I imagine it was unquestionably correct; the statement itself; I don't know.

Q. Don't remember filing any after 1909, of that character?

A. I don't know.

Q. What business did the Company, if any, carry on at Louisville, after the removal of its manufacturing plants from Louisville?

A. It carried a transfer stock of goods at Louisville. That is for the compliance with our contracts where they are made
344 in this territory; for the delivery of the goods at Louisville.

Q. Did you have any place of business in Louisville, except that transfer house?

A. No.

Q. Own that?

A. No. We contracted with the Transfer Company to transfer our goods there.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You had a transfer house in the City of Louisville to which you shipped goods that were to be shipped from Louisville to certain customers, is that correct?

A. Yes, sir.

Q. When did you discontinue that?

A. Since this action was brought against us.

Q. You discontinued that subsequent to November 16th, 1911?

A. Yes, sir.

Q. How long did your goods remain in that house as a rule?

A. That would be rather difficult to answer in any definite manner, judge. Some of our goods would go out immediately upon receipt; others would remain there a month or two possibly.

Q. How much space did you rent there?

A. We didn't rent space.

345 Q. What did you rent?

A. We simply paid them a stipulated amount to receive and ship our goods.

Q. How much did you pay them per month?

A. We paid them so much per machine.

Q. Paid so much per machine?

A. Yes, sir.

Q. Are you a large or small stockholder in the American Seeding Machine Company?

A. That is relative Judge—I have a substantial interest in the company.

Q. How many of you have such a substantial interest in the company, as control a majority of the stock; you say there are about six hundred stock holders, how many have a majority of the stock?

A. That would be difficult to answer. It would take some considerable number.

Q. About how many?

A. It might be about twenty five; or about fifty. I couldn't say.

Q. You say there are four officer- who receive a salary aggregating Thirty Thousand Dollars?

A. A trifle less than Thirty Thousand Dollars.

Q. The original salaries of those officers amounted to Forty Thousand Dollars?

A. Yes, sir; as it was first organized.

Q. Ten Thousand Dollars each?

A. Yes, sir; approximately.

346 Q. And they were cut down twenty five per cent, and each now receives \$7,500.00?

A. Yes, sir.

Q. You are one of the fortunate four?

A. Yes, sir.

Q. Mr. Carr is another, who is the third?

A. Mr. Johnson.

Q. And the fourth?

A. Mr. Bookwalter.

Q. Is there any relation existing between you gentlemen?

A. Mr. Carr is a brother-in-law of mine.

Q. How about Mr. Johnson?

A. None.

Q. Mr. Buckwalter?

A. None.

Q. Mr. Carr is President, and you are Secretary and Treasurer?

A. No; I am just Treasurer.

Q. You and Mr. Carr each own a substantial interest of the stock in that Corporation?

A. I do; yes.

Q. Mr. Westcott; who incorporated the New Jersey American Seeding Machine Company, in 1903?

A. Yes, sir.

Q. Its Preferred stock was what?

A. \$6,034,000.00 issued.

Q. \$6,034,000.00?

A. Yes, sir.

Q. The Common stock, what was issued of that?

347 A. A like amount.

Q. In other words to each stock holder, each owner of a share of Preferred stock, as a bonus you issued him one share of Common stock?

A. Yes, sir.

Q. You hoped then not only that the preferred stock would pay a handsome dividend, but to be able to pay a dividend on the common stock?

A. We hoped to eventually; and also to reap the good will and possibilities of the business.

Q. In other words, \$6,034,000.00 represented the value of the place, and the property you received?

A. That is it, exactly.

Q. And the \$6,034,000.00 Common stock represented the value of the good will?

A. Yes, sir.

Q. In other words, when you entered into the combination you

hoped to realize profits therefrom, not only to pay the six per cent dividends on the preferred stock, but also to pay dividends on the common stock?

A. Yes, sir; in a way.

Q. In other words, you expected with this property to make dividends upon the property, the cash value of which was \$6,034,000.00, and you wanted to make such profits on that property as would pay dividends on \$12,068,000.00?

A. That depends, we hoped to have it pay dividends when we—

Q. You eventually hoped to do that?

348 A. We hoped that it would eventually have a substantial value.

Q. You eventually hoped to realize dividends on \$6,034,000 worth of property; that the profits on that property would pay dividends upon a valuation of \$12,068,000.00?

A. Yes, sir; but I beg leave to add to that. It was not all blue skie. It was the good will of the business which had been established some thirty or forty or fifty years, which certainly had some value.

Q. You had taken into this arrangement the largest individual grain and producing manufacturers in the United States, hadn't you?

A. Well, approximately two of them conform to that; otherwise not.

Q. The two largest grain drill manufacturers in the United States were taken into this?

A. Yes, sir.

Q. And in addition to this, you had taken in four small ones?

A. Yes, sir.

Q. In that way, isn't it a fact that you practically also controlled the grain drill business?

A. No, sir.

Q. What was the purpose of this organization?

A. To get a conservative selling and distributing organization, covering the whole country and Foreign Countries. And to enable us, through the union and combination of assets, and what we thought our ability was, to have a more efficient organization;
349 one which could be operated on economy and a saving basis, and with greater profits, consequently.

Q. You had no interest prior to this time in the Southwestern Agricultural Implement works?

A. No, sir.

Q. A great deal of its business was in the Northwest?

A. Yes, sir.

Q. What company come in competition with it, of those Companies forming your Combination?

A. It came in competition with the Hoosier and Superior.

Q. By the combination of the Hoosier, Superior and the Southwestern, in the Northwest country, you eliminated any competition in that territory as between those Companies?

A. We didn't have thirty three and a third per cent of the business in that territory, within our business.

Q. Please read the question to the witness. (Stenographer read preceding question to witness.)

A. No.—You say as between those Companies—Certainly we did.

Q. Who were the competing companies in the State of Kentucky; isn't it a fact that prior to this combination they were the Empire, Hoosier and Kentucky—I mean the Superior, Empire, Hoosier, and Kentucky; were they not the competing companies in Kentucky?

A. The trade in Kentucky was so small comparatively that I don't know. I am not informed.

350 Q. Who were the competing Companies in the states of Indiana and Ohio?

A. Well it was—Of course this is from memory. I would say the Wayne Agricultural Works, the Rude Brothers Manufacturing Company, of Liberty Indiana. The Ontario Drill Company, of Ontario New York, and the McSherry manufacturing Company; and a number of others.

Q. Which did you say the two largest companies in the United States were that went into this combination?

A. I would say the Superior and Hoosier.

Q. Where is the Superior manufactured?

A. Springfield.

Q. Where was the Hoosier?

A. Richmond, Indiana.

Q. The Hoosier was one of the largest in that country?

A. Yes, sir.

Q. The Hoosier was one of the largest in that country?

A. Yes, sir.

Q. And the Superior was one of the largest?

A. Yes, sir.

Q. By this combination all competition was eliminated between those two companies?

A. Yes, sir.

Q. And as you took in other Companies, so far as they were concerned, all competition between them was eliminated?

A. Yes, sir.

351 Q. And instead of the competition; subsequent to that time there may have been competition between the agents, but the results of all of this competition went in the coffers of the American Seeding Machine Company?

A. As relating to the handling of the lines manufactured by the American Seeding Machine Company, yes, sir.

Q. Mr. Westcott, after the American Seeding Machine Company of New Jersey it continued in operation until what time?

A. Until March 31st, 1906.

Q. Until March 31st, 1906; and in March, 1906, the American Seeding Machine Company of Springfield, Ohio was formed?

A. Yes, sir.

Q. And it took over the holdings of the American Seeding Machine Company of New Jersey?

A. Yes, sir.

Q. What was the value of the assets of the American Seeding Machine Company of New Jersey at the time of that transfer?

A. Approximately \$7,000,000.00.

Q. \$7,000,000.00?

A. Yes, sir.

Q. The assets of the Company had increased in value, from 1903 March, 1903, then estimated at \$6,034.00 up to \$7,000,000.00 in 1906?

A. Yes, sir. Incident to the sale of stock of some three, or Four Hundred Thousand Dollars of stock and Six Hundred Thousand Dollars earnings.

Q. You mean the earnings of the Company?

352 A. Yes, sir.

Q. The net earnings were Six Hundred Thousand Dollars, during that time?

A. No, the gross earnings. At the close of 1906, it was \$627,000.00, and it would have been something less than that.

Q. Had any dividends been paid on the preferred stock of the New Jersey Company?

A. When.

Q. From the time of the organization up to its being taken over by the Ohio Company?

A. Yes, sir.

Q. Were those dividends regularly paid upon the preferred stock?

A. The first dividend—The company was organized in March 9th, 1903, and began business on the March 16th. There was a statement of dividends there at the bottom of that paper you have.

Q. 1903?

A. Yes, sir; then 1904. The dividends commenced in August, 1903.

Q. \$194,668.25?

A. Yes, sir; three and a half per cent on the outstanding preferred stock.

Q. In 1904 the dividends were \$334,412.16?

A. Yes, sir.

Q. In 1905 there was no dividends?

A. No, sir.

Q. In 1906 they were \$270,825.00?

353 A. Yes, sir.

Q. And then it went over to the Ohio Company?

A. A big portion of that was New Jersey, and a portion Ohio; that is the total dividends. That change was in the Corporation only, and in the reduction of the Capital stock.

Q. What was the Capital stock of the Ohio Company?

A. \$2,500,000.00 Preferred and \$5,000,000.00 Common; just half of the New Jersey Capitalization.

Q. In 1908, what dividend did you pay on that stock?

A. Six per cent on the outstanding preferred stock; and none on the Common.

Q. 1909?

A. \$89,000.00. Six per cent on the outstanding preferred stock, and none on the common stock.

Q. What did you pay in 1910, on the common?

A. \$93,000.00 or six per cent on the preferred stock.

Q. What did you pay in 1911?

A. Six per cent on the preferred stock, outstanding, and four per cent on the Common.

Q. In 1911; you paid six per cent on the preferred stock, which amounted to \$327,000.00?

A. That is the total for both.

Q. You paid in 1911, four per cent on the common, and six per cent on the preferred stock, in full?

A. Yes, sir.

Q. In all of those years, I notice the last line speaks of a balance surplus, what do you mean by that?

A. That means the accumulated earnings not charged off
354 or distributed in dividends.

Q. What is done with that?

A. Invested in the business.

Q. It is put back in the business?

A. No, sir; it never comes out; it stays there; it never comes out of the business.

Q. What was the total of that?

A. \$1,621,000.00 at the close of 1911, in nine years.

Q. You paid from 1903 to 1911 \$1,656,666.91 in dividends?

A. Yes, sir; an average of \$184,000.00 per year.

Q. And in addition to that you accumulated a surplus of \$1,
621,125.89?

A. Yes, sir.

Q. What is the amount of your surplus and your dividends?

A. \$3,267,127.01.

Q. That you made from 1903 to 1911?

A. Yes, sir.

Q. In addition to that you have paid all fixed charges?

A. What do you mean by fixed charges.

Q. You haven't mortgaged your property in any way?

A. We borrow money, of course.

Q. There is no claims against the property?

A. No, sir.

Q. Your property has improved right along?

A. Yes, sir.

Q. More efficient machines have been put in there?

A. Yes, sir; there is where the surplus has been put in.

Q. More efficient work has been done?

A. I hope so.

355 Q. Your business has been increasing rapidly?

A. Yes, sir; if it hadn't we would have been out of business before this.

Q. Did you set aside for the depreciation of your plant any special amount each year?

A. Yes, sir; we set aside in the total period \$212,000.00.

Q. \$212,000.00 for depreciation of plant?

A. Yes, sir.

Q. In addition, of course, to the surplus and dividends?

A. Yes, sir.

Q. Is there anything else you set aside?

A. In addition to that?

Q. Yes?

A. No, sir those are deferred charges. Let me explain that, they are something that are absorbed in the succeeding period.

Q. In this paper that has been offered in evidence, Mr. Bowman, and styled analysis of deferred charges and deductions, the figures themselves I have no objection to, but there is certain memoranda made by Mr. Westcott, I don't think is competent as evidence, however I will submit it to the court?

A. It is explanatory. The figures without the explanation would be of no real value.

Q. I will withdraw my objection then. In 1917, didn't we have a panic in all of the United States, and didn't it to a considerable extent depreciate the prices and effect business generally.

A. It certainly effected business. It occurred in October, 25th, 1907. We owed Two Million Dollars, so I can tell pretty well when it was.

Q. I see here, owing to reduced profits, due to narrow margin and surplus above dividends, there was no depreciation charge made this year, 1907, wasn't the real cause the panic that came along about that time?

A. The profits not large; that is, they were not very material. They didn't admit of any serious depreciation charges; and we had a credit in the bank we had to keep going.

(And further the witness sayeth not.)

Said exhibit "A. D." filed with the testimony of the foregoing witness, Mr. Westcott, is in words and figures as follows, to-wit:

(Here follows paster, marked page 357.)

Year, Nov. 1st	1903 (7 $\frac{1}{2}$ Mos.).
Sales	\$2,069,977.32
Gross Revenue	790,445.22
Expenses	429,562.05
Net Revenue	360,883.17
Reserves and Deferred Charges	50,000.00
Net Gain	310,883.17
Dividends	194,668.25
Surplus	116,214.92
Previous Surplus .....	.....
Balance Surplus	116,214.92

Record of Earnings:

1903.....	\$310,883.17	
1904.....	325,463.54	
1905.....	268,188.51	
1906.....	511,764.33	
1907.....	354,850.38	
1908.....	93,430.40	Less
1909.....	254,356.08	
1910.....	696,235.60	
1911.....	638,815.80	

Total 9 Years \$3,267,127.01

Yearly Av.....	363,014.11
Aver. Div.....	184,074.10

Record of D

1903.....	
1904.....	
1905.....	
1906.....	
1907.....	
1908.....	
1909.....	
1910.....	
1911.....	

Total...

Average

Financial Statement of Appellant.

(Tr. of Ev., 338.)

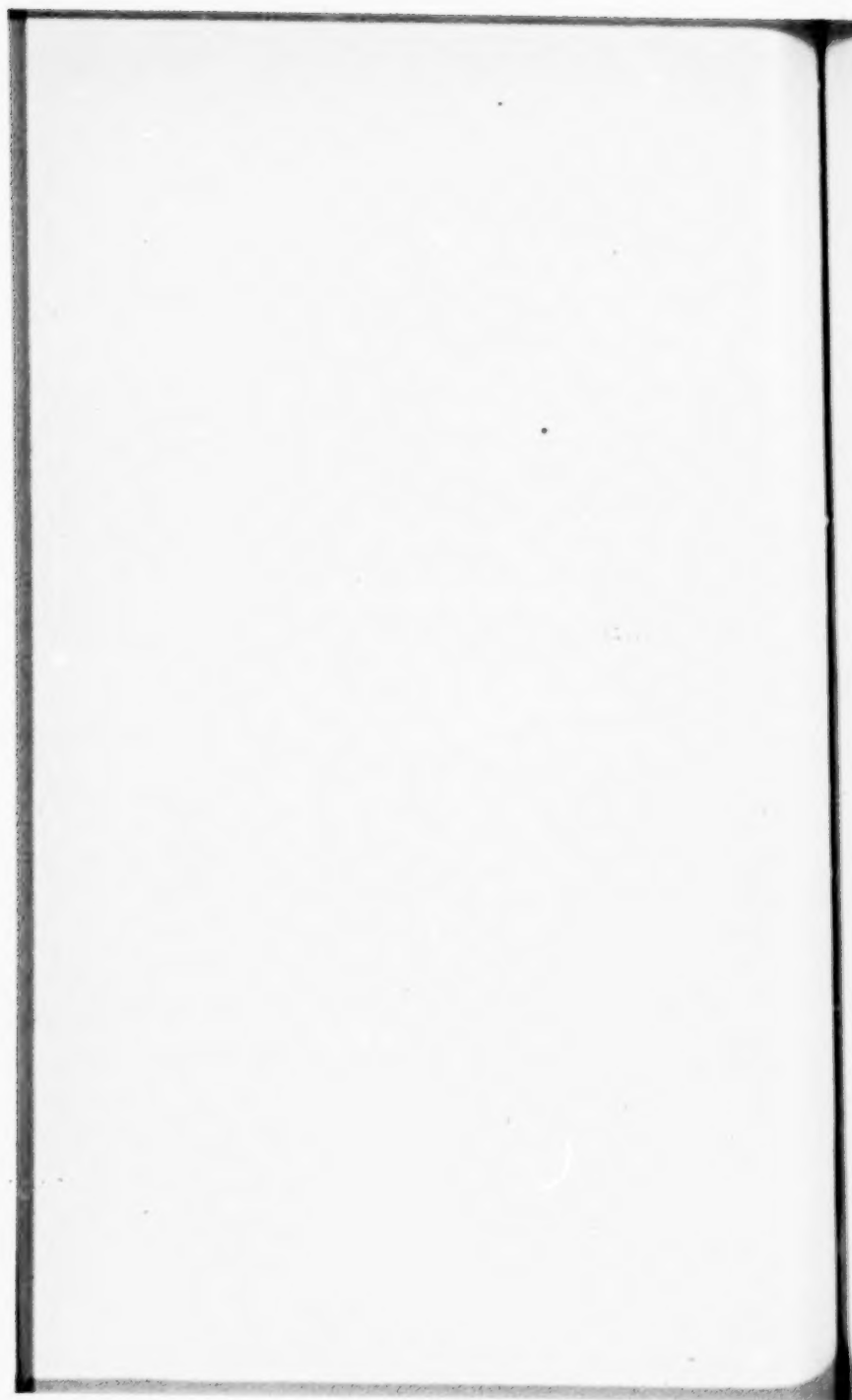
1903 (7½ Mos.).	1904.	1905.	1906.	1907.	1908.	1909.	1910.	1911.
\$2,069,977.32	\$2,858,969.95	\$3,012,288.84	\$3,368,567.85	\$3,369,787.00	\$2,584,767.94	\$3,271,250.92	\$4,568,439.43	\$4,956,229.38
790,445.22	1,247,720.98	1,216,591.48	1,361,106.29	1,335,850.92	964,723.86	1,228,921.25	1,896,785.19	2,082,804.21
429,562.05	812,086.30	751,031.94	795,091.96	981,000.54	1,058,154.26	924,565.17	1,018,022.86	1,244,707.39
360,883.17	435,634.68	465,559.54	566,014.33	354,850.38	Def. 93,430.40	304,356.08	878,762.33	838,095.82
50,000.00	110,171.14	197,371.03	54,250.00	.....	.....	50,000.00	182,526.73	199,280.02
310,883.17	325,463.54	268,188.51	511,764.33	354,850.58	Def. 93,430.40	254,356.08	696,235.60	638,815.80
194,668.25	334,412.16	.....	270,825.00	260,842.00	86,388.00	89,253.00	93,052.50	327,226.00
116,214.92	Def. 8,948.62	268,188.51	240,939.33	94,008.38	179,818.40	165,103.08	603,183.10	311,589.80
.....	116,214.92	107,266.30	386,120.60	627,059.93	721,068.31	541,249.91	706,352.99	1,309,536.09
116,214.92	107,266.30	375,454.81	627,059.93	721,068.31	541,249.91	706,352.99	1,309,536.09	1,621,125.89
		10,665.79						
		386,120.60						

Record of Dividends:

1903.....	\$194,668.25
1904.....	334,412.16
1905.....	.....
1906.....	270,825.00
1907.....	260,842.00
1908.....	86,388.00
1909.....	89,253.00
1910.....	93,052.50
1911.....	327,226.00

Total..... \$1,656,666.91

Average..... 184,074.10



358 (Said exhibit "A. G." filed with the testimony of B. J. Westcott, and referred to on page 311 of this record, is in words and figures as follows:)

"Analysis of Reserves & Deferred Charges Deductions.

1903.	\$50,000.	Reserve for discounts and allowances on a/c's receivable and against which was charged such shrinkages in the ensuing year.	
1904.	\$110,000.	Loss on goods shipped in 1903 credited to profits of 1903 but returned in 1904.....	\$35,171.14
		Reserve for settlement 1904 acc'ts.....	75,000.00
			<hr/> 110,171.14
1905.	\$197,371.03.	Loss on returned goods shipped in prior Periods	\$92,371.03
		Reserve for settlement 1905 accounts.....	100,000.00
		" " Fire Loss	5,000.00
			<hr/> \$197,371.03
1906.	\$54,250.	Reserve for Plant Depreciation.....	\$50,000.00
		Special Expense Ohio Incorporation.....	4,250.00
			<hr/> \$54,250.00
1907.	Owing to reduced profits due to greatly increasing mfg. costs, and narrow margin of year's surplus above dividends paid, no depreciation charge was made this year.		
1908.		Volume of business decreased.....	785,019.06
		And net loss for year resulted.....	93,430.40
		No depreciation charge made.	
1909.	\$50,000.	Reserve for Plant Depreciation.	
359			
1910.	\$182,526.73.	Reserve for Depreciation Receivables.....	\$49,931.03
		" " " Plant.....	100,000.00
		" " Accrued taxes.....	38,595.70
			<hr/> \$182,526.73

1911. \$199,280.02.

Reserve for depreciation plant.....	\$150,000.00
“ “ Adjustment transfer stocks to reduce to Invent'y value.....	49,280.02
	<hr/>
	\$199,280.02

Maintenance & Replacement for year amounted to \$137,541.52, which was chagd. against the Plant depr. Reserve leaving a balance only \$12,458.48 of the \$150,000.00 charged for the year.”

(Said exhibit “Y” offered to be filed by Mr. Westcott, with his testimony, but to the filing of which an objection was sustained, is in words and figures, as follows:)

Report of The American Seeding Machine Company, Springfield, Ohio, to the Auditor of Public Accounts of Kentucky, as of December 31st, 1909, to Be Filed on or Before February 1st, 1910.

(Acts 1906.)

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. All corporations having capital stock divided into shares organized by or under the laws of this or any other State or Government owning property or doing business in this state, except foreign insurance companies, whether fire, life, accident, casualty or indemnity, foreign and domestic building and loan associations, banks and trust companies, and all corporations which, under
360 this act of the general law, are liable to pay a franchise or license tax, shall pay to this State an annual license tax based upon its authorized capital stock, as hereinafter provided.

SECTION 2. For convenience in classification, corporations are divided into two classes, domestic and foreign. A domestic corporation is one incorporated by and under the laws of this State; every other corporation is a foreign corporation.

SECTION 3. Domestic and foreign corporations shall pay an annual tax of thirty cents on each one thousand dollars of that part of their authorized capital stock represented by property owned and business transacted in this State, which shall be ascertained by finding the proportion that the property owned and business transacted in this State bears to the aggregate amount of property owned and business transacted in and out of this State.

Provided, that such corporations may pay at said rate upon their entire authorized capital stock; and in that event they shall not be required to report as in subdivision three (3) of section four (4) hereof. And their failure so to report shall be deemed conclusive evidence that such corporation elects to pay upon its entire author-

ized capital stock, and it shall be its duty so to do, and the duty of the Board of Valuation and Assessment to so fix its license tax.

SECTION 4. In order to ascertain the amount of the taxes due and payable under the next preceding section, by such corporations now owning property or transacting — in this State, it shall be the duty of every such corporation to file with the Auditor of Public Accounts, on or before the 1st day of February, 1907, and on or before the same day annually thereafter, a written report, verified by the affidavit of the president or secretary of such corporation, showing:

1. The name of such corporation, the name of the State or government under the laws of which it is incorporated, the date of the incorporation, the place of its principal office in and out of this Commonwealth, the name and post office address of its president and secretary, the name and postoffice address of its authorized agent or attorney upon whom process may be executed, as provided by law, and the name and address of its officer or agent in charge of its business in this State.

2. The total amount of its authorized capital stock.

3. The value of the property owned and used by the Company in Kentucky, where situated, and the value of the property owned and used by the company outside of Kentucky the aggregate amount of business transacted by said company during the preceding year ending the 31st day of December, and the proportion of such business transacted in this State, and such other facts bearing on this matter as the Board of Valuation and Assessment may require.

It shall be the duty of the Board of Valuation and Assessment, from such reports and from such additional information it may require, to ascertain and fix that part of the authorized capital stock of such corporations upon which the license tax shall be based as herein provided, and to fix the license tax of such corporation at the rate hereinbefore prescribed. The Board may in any case require such additional information as it may deem necessary to enable it to perform its duties herein; and it shall be the duty of the Auditor of Public Accounts to notify every such corporation of the amount so assessed by the Board. The notice may be given as provided in section 5 hereof, and it shall be the duty of the corporation to pay the amount of such tax to the Auditor of Public Accounts not later than thirty days thereafter or not later than thirty days after the final action by the Board should it grant a rehearing, which the Board may grant upon application therefor, filed within thirty days after the date of such notice. Upon final action by the Board, it shall certify to the Auditor of Public Accounts the amount of such tax due from each and every corporation.

SECTION 5. It shall be the duty of the Secretary of State to certify to the Auditor of Public Accounts the names and addresses of all corporations coming within the purview of this article, and also the names of their designated agent upon whom process may be executed, that now or that may hereafter appear upon the records of his office.

From such certification and from the records of his own office, it shall be the duty of the Auditor of Public Accounts to notify such corporations required to report under this article and furnish a blank upon which to make the report, not later than December 15th in each year. Proof that such notice and blank have been deposited in the United States mail duly stamped and addressed to the person last designates as the person upon whom process may be served, shall in all cases be deemed conclusive evidence that such notice to report had been given to such corporation.

SECTION 6. Domestic corporations hereafter incorporated shall not be required to pay the annual license tax in this article provided for the year in which they may be organized.

SECTION 7. Domestic corporations hereafter incorporated, and foreign corporations hereafter becoming the owner of property or transacting business in this State shall make such report to the Auditor of Public Accounts, in the manner provided in this article, on or before February first succeeding their incorporation or succeeding their becoming the owner of property, or transacting business in this State; and shall make such report on or before the said date annually thereafter. And, except as provided in section 6 of this article, such corporations shall pay the annual license tax at the rate and in the proportion provided in section 3, and in all respects be subject to all the provisions and penalties in this article contained and prescribed.

SECTION 8. Any person who shall falsely make an affidavit herein required shall be guilty of false swearing, and upon conviction therefor, shall suffer the pains and penalties in such case made and provided. And any corporation which willfully violated the provisions of this article or any such provisions, or willfully fails or neglects to perform any duty herein imposed upon it, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined any sum not less than \$50.00 nor more than \$1,000.00 for each offense; the same to be recovered by penal action or by indictment in the circuit court of Franklin county; and every such judgment or conviction for failure to report or for failure to pay the annual license tax required, shall also *proforce* that the right to be a corporation and to exercise the rights and franchise of a corporation in this State shall be suspended until the fines and costs and all taxes and penalties due the State shall be paid or replevied, or the judgment superseded. Every corporation failing to pay its taxes as provided in this article within the time herein prescribed shall be deemed a delinquent, and a penalty of ten per centum on the amount of such tax shall attach and thereafter such tax shall bear interest at the rate of ten per centum per annum, the same to be collected in the same manner and by the same process as the tax is collected.

SECTION 9. No corporation required to pay an annual tax under this article shall pay a less sum therefor than ten dollars.

Schedule of License Tax on Corporations. Name of Company, The American Seeding-Machine Company. Where located, Spring-

field, Ohio. Correct Post Office Address of Company. Character of Business, Manufacture of Agricultural Implements. Name of Agent in State upon whom process may be executed, George D. Rogers. Address of Authorized Agent, #220 10th St. Louisville, Ky. Name of President. Principal Office of Company. Authorized Capital Stock of Company. (Issued 6,498,000.) \$7,500,000. Amount of stock issued. Number of shares. 75,000. Entire gross income for year ending December 31, 1909 \$3,286,999. Gross income for Kentucky as above. See note of explanation. Percentage to Kentucky. Total value of tangible property. Value in Kentucky \$2,000. Where located. City of Louisville. Percentage in Kentucky. Name of State under which Company is incorporated, Ohio. Year in which Company was incorporated, 1906. Sign here.

B. J. WESTCOTT, *Treas.*

COMMONWEALTH OF OHIO,
Clark County:

This day personally appeared before me the undersigned, a — in and for the State and county aforesaid, — — —, whose signature is attached thereto, and made oath that the statements in answer to the above interrogatories are true to the best of his knowledge and belief. Given under my hand this 4th day of Jan. 1910.

[SEAL.]

WILLIAM J. GRIM,
Notary Public, Clark Co., Ohio.

Commission expires March 10, 1912.

This is for the use of State Board of Valuation and Assessment.

Remarks.

NOTE.—The manufacturing business formerly conducted at Louisville was discontinued in July 1908, and the Company is no longer conducting a business in the state. There is still owned one small vacant lot, and for purposes of this return the annual business done in Kentucky for year ending Dec. 31st, 1909, is given at the nominal sum of \$10,000.

(Endorsed:) A true copy of the records on file in office of Auditor of Public Accounts, State of Ky. B. G. Likens, Assistant Auditor."

(Said exhibit "Z" offered to be filed by B. J. Westcott, but to the filing of which an objection was sustained, is in words and figures as follows, to-wit:)

"Report of the American Seeding Machine Co., General Owce, Springfield, Ohio, to the Auditor of Public Accounts of Kentucky, as of December, 31st, 1910, to Be Filed on or Before February 1st, 1911.

(Acts 1906.)

(This part of this exhibit is the same as that copied in exhibit "Y" and therefore is not copied here.)

"Schedule of license tax on Corporations. Name of Company; The American Seeding Machine Co. Where Located; Springfield, Ohio. Correct Post Office Address of Company. Character of business. Manufacture of agricultural Implements. Name of Agent in State upon whom process may be executed; Geo. D. Rogers. Address of Authorized Agent; 220, 10th St. Louisville, Ky. Name of President, Edward L. Buckwalter. Principal place of Office of Company, Springfield Ohio. Authorized Capital Stock of Company, \$7,500,000. Amount of stock issued, \$6,558,800. Number of shares 65,588. Entire gross income for year ending December 31 \$4,000,000. Gross income for Kentucky as above (See explanatory note) \$10,000. Percentage to Kentucky. Total value of tangible property. Value in Kentucky \$2,000. Where located, Louisville, Ky. Percentage in Kentucky. Name of State under which Company is incorporated, Ohio. Year in which Company was incorporated, 1906. Sign here.

B. J. WESTCOTT, *Treasurer.*

COMMONWEALTH OF OHIO,

Clark County:

This day personally appeared before me the undersigned, a Notary Public in and for the State and County aforesaid, B. J. Westcott, Treas. of the American Seeding Machine Co., whose signature is attached thereto, and made oath that the statements in answer to the above interrogatories are true to the best of his knowledge and belief. Given under my hand this 10th day of January, 1911.

[SEAL.]

WILLIAM J. GRIM,

Notary Public, Clark Co., Ohio.

Commission expires Mch. 10, 1912.

This is for the use of the State Board of Valuation and Assessment.

Remarks.

NOTE.—The manufacturing business formerly conducted at Louisville was discontinued July 1908, and the Co. is no longer conducting a business in the state. There is still owned one small vacant lot and for purposes of this return the annual business done in Ky. for the year ending Dec. 31, 1910 is given at the nominal sum of \$10,000.00.

(Endorsed:) A true copy of the record on file in office of Auditor of Public Accounts, State of Ky. G. B. Likens, Ass't Auditor."

368 ELLIS BYBEE having been recalled as a witness on behalf of the defendant, for further examination, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant.

Q. Have you the written memoranda from which you testified the other day, with you?

A. Yes, sir.

Q. You were asked to examine your files and records, you might have, in regard to the charge of \$52.00 in 1903 for the six by eight drill to see whether that included the grass seeder attachment were you able to find it, and did it or not?

A. It included it yes, sir.

Q. Did you ascertain whether that was the regular price, or a special price for some reason?

A. I don't know about that. Might have made some concessions on that. I don't remember any change in the price from 1903 to 1905.

Q. Cases arise in your transactions with the Company when some special concessions were made?

A. Yes, sir.

Q. Nothing on your records to show whether this is one of these cases or not?

A. No, sir.

Q. Another matter I asked you to examine, in regard to where you had the price \$60.50; what was that?

A. That was an error; the price was \$60.00 even. The 369 drill was billed without the seeder; and I just thought the price of the seeder was \$2.50 and added that on that way.

Q. Fifty cents of that should not be on there?

A. No, sir; I find on examining the bill that it was \$60.00 even and two for the seeder.

(And further the witness sayeth not.)

J. A. CARR having been re-called as a witness on behalf of the defendant, for further examination, and having been first duly sworn, and being examined by Mr. Bowman of counsel for defendant, testified as follows:

Q. Mr. Carr, in Kentucky, in giving the details of the prices, and the changes that were made by the combined Company, the price of the whole goods upon which those changes were made, you had some trouble on account of the figuring up of some memoranda you had about that, do you desire to make any change in your testimony?

A. I do, sir.

Q. What?

A. I found that previously I testified that the change on the six by eight disk drill the total change was \$9.50 from the lowest to the highest price. My figures were given some way or other on that;

and I find that I didn't include one price change made in 1905 of \$2.00.

370 Q. Was that price change confined to the six by eight, or to all sizes?

A. The six by eight only. I also didn't include the grass seeder attachment a sufficient sum; I found it occurred in 1908 instead of 1910.

Q. When you speak of the price change of two dollars on the special size, six by eight, that was a special change, when did you say that occurred?

A. It occurred in 1905. It was advance arranged for and decided on in 1904. It didn't apply until 1905.

Q. Applied in 1905 business?

A. Yes, sir.

Q. Have you made a calculated statement of those changes?

A. I have; yes, sir.

Q. Tabulated them?

A. Yes, sir; I have tabulated all of the prices on all styles of machines.

Q. That is a correct statement?

A. Yes, sir; it is correct.

Mr. CARROLL: Is that different from the other.

Mr. BOWMAN: Yes, sir; it involves the corrections. We would like to introduce that in connection with Mr. Carr's evidence.

The COURT: Very well let it be filed. (Marked exhibit "C. H." see page 357 of this record.)

Q. I notice this statement has the prices for the year 1903
371 in the first column; those were the prices of the old companies?

A. Yes, sir.

Q. They were made in 1902?

A. Yes, sir.

Q. Now the revised statement seems to involve a change of two dollars on the six by eight in the 1903 prices of the Hoosier, prices of 1903, given as 1902, as \$52.00, and the Superior \$54.00 and the Empire \$56.00, and the Kentucky as \$52.00, the Bickford & Huffman, of the drill named Farmer's Favorite at \$58.00—

A. The Empire is \$56.50 instead of as you called it.

Q. There seems to be two dollars less right through, less than what you gave in your testimony?

A. Yes, sir; as I remember it.

Q. How did that occur?

A. My memoranda was a memoranda I worked from was incomplete. It was without the grass seeder, and I was unable to make the changes in my mind at the time. I should not have gone into it, that way, as I made some errors.

Q. There is some mention made in the evidence about some changes in the repairs, the prices of the repairs, by the American

Seeding Machine Company; how many pieces are there in the repair list; how many different pieces in the repair list?

A. At Richmond there is over Ten Thousand pieces, and about the same number at Springfield. I haven't been able to go into that as carefully. At Richmond there are ten thousand four hundred pieces.

372 Q. When, if at any time, was the matter of changing the price of repairs gone into by the American Seeding Machine Company?

A. In 1910; or October, 1909 for 1910.

Q. What was the nature of that transaction regarding repairs?

A. It was to adjust the differences between the prices that the different companies had been charging for practically, or similar pieces.

Q. Were there any other reasons for adjustment of the prices of these pieces?

A. Yes, sir; the pieces formerly had been made of gray iron. And had been changed to mal-able iron. The price of the corn drill proves one item that I happen to think of. It was adjusted; was lowered on account of the difference in mal-able and gray iron. Now the Empire prices being higher than the Hoosier, they were lowered. Rubber tubes had increased in price.

Q. On what ground?

A. On the ground of the increased cost of rubber.

Q. What is the ingredient?

A. Rubber and canvass.

Q. Scrap rubber or pure para rubber?

A. The rubber we use would be called—I couldn't say it would be called pure para rubber; but it is a grade between pure para rubber and re-claimed rubber, which is made from old rubber shoes and so forth.

Q. State whether or not there had been an advance in the material?

373 A. Yes, sir; a very important advance in the tubes to the company. I understood in the material from which they were made.

Q. Where the prices of cast iron pieces; you say where the repairs had been changed to mal-able pieces, had you been selling cast iron pieces?

A. Yes, sir; very often we would take the same pattern, which could be made of mal-able, and make the same pattern out of gray iron, or make it of mal-able. That is done because of the considerable breakage on the pi-ces. And often to lig-ten the piece, and make it of mal-able, and other pieces we would make them similar in formation, but make them of mal-able.

Q. Why is mal-able more expensive material?

A. The same process in making mal-able—

Mr. CARROLL: We object to that.

The COURT: Overrule the objection.

Q. In that adjustment you made along those lines, what was the total number of pieces refer-ed to, how many were changed?

A. About fourteen hundred of the ten thousand were increased, and about five hundred reduced, in our whole catalogue.

Q. Mr. Carr, what is the relation of the price of repairs to the price of the producing of those parts by the manufacturer; the cost of producing it as compared with the price of the *the* part; as compared with the machine and the cost of its production. Does the price you fix for the repair bear the same relation to the cost of producing it, in the manufacturing part, as the price of the machine bears to the cost of manufacturing it?

374 A. No, sir.

Q. Why not?

A. The repairs are generally carried in large stock than the demand is incident to. They are carried——

Q. Never mind how they are carried?

A. Because they are not sold in the same universal regular way. The demand for them is very uncertain.

Q. How far back in the styles of machines do you have to carry repairs?

A. Machines made in 1860; we carry them for machines made for the latter part of the sixties.

Q. Have you machines out that were mad- that late, that are liable to call for repairs?

A. Yes, sir.

Q. What becomes of that portion of the repairs that are not called for?

A. They are ultimately scrap.

Q. What is their value when they become scrap?

A. Very slight; only the value of scrap iron.

Q. Does that bear any relation to the value or cost of the original material and the manufacturing of the part?

A. Very small per cent. I wouldn't say that; I couldn't hardly estimate what per cent.

Q. I believe you testified that the prices of the Seeding Machine Company were based on the proportion of uniformity
375 throughout the country; I don't think I understood you, whether the prices changes to which you have referred were extended uniformly throughout the territory when they were made?

A. Yes, sir.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. What was the increase per cent on the repairs?

A. About two per cent on the whole.

Q. On the ten thousand?

A. The average increase on all of the items was about two per cent.

Q. Did you have an experimental station connected with the Hoosier Drill Company before the consolidation?

A. Yes, sir.

Q. So had the Superior?

A. Yes, sir.

Q. So had each of the Companies?

A. No, I think only those two did.

Q. How many men in the Experimental Department of the Hoosier Drill Company before the combination?

A. Five or six.

Q. How many in the Superior?

A. I think a few more.

Q. Do you know whether or not the others had them?

A. I am sure one factory had none; I would not say as to the others.

Q. Which one?

376 A. The Empire.

Q. The others, you don't know?

A. No, sir; I don't know positively.

Mr. BOWMAN: Did you testify how many men were employed now by the defendant Company?

WITNESS: I have heretofore.

(And further the witness sayeth not.)

Said exhibit "C. H." filed with the testimony of Mr. Carr, and referred to on page 351 of this records, is in words and figures as follows:

	1903	1904	1905	1906	1907	1908	1909	1910	1911
Hoosier 6 x 8 Fert. Disk Drill									
& G. S. A.	52.00	52.00	54.00	54.00	55.00	59.50	59.50	59.50	61.50
Hoosier 8 x 8 Disk Drill Fert.									
& G. S. A.	60.00	60.00	60.00	60.00	61.00	65.50	65.50	65.50	67.50
Superior 6 x 8 Disk Drill &									
G. S. A.	54.00	52.00	54.00	54.00	55.00	59.50	59.50	59.50	61.50
Superior 8 x 8 Fert. Disk Drill									
G. S. A.	62.00	60.00	60.00	60.00	61.00	65.50	65.50	65.50	67.50
Empire 6 x 8 Disk Drill &									
G. S. A.	56.50	52.00	54.00	54.00	55.00	59.50	59.50	59.50	61.50
Empire 8 x 8 Disk drill &									
G. S. A.	64.50	60.00	60.00	60.00	61.00	65.50	65.50	65.50	67.50
377									
Kentucky 6 x 8 disk drill &									
G. S. A.	52.00	52.00	54.00	54.00	55.00	59.50	59.50	59.50	61.50
Kentucky 8 x 8 Disk drill &									
G. S. A.	60.00	60.00	60.00	60.00	61.00	65.50	65.50	65.50	67.50
B. & H. 6 x 8 Disk drill Fert.									
G. S. A.	58.00	52.00	54.00	54.00	55.00	59.50	59.50	59.50	61.50
B. & H. 8 x 8 Fert. Disk Drill									
G. S. A.	66.00	60.00	60.00	60.00	61.00	65.50	65.50	65.50	67.50
Cash discount.....	5%	5%	5%	5%	5%	7%	7%	7%	7%

F. C. JOHNSON having been called as a witness on behalf of the defendant, and having been first duly sworn and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for the defendant:

Q. What is your occupation?

A. Vice President of the American Seeding Machine Company.

Q. To what extent do you participate in the actual management of the business there?

A. I am Manager of the works at Springfield, Ohio. And a Member of the Executive Committee looking after the general conduct of the business.

Q. How long have you been engaged in that business?

A. Since June, 1887.

Q. You had been engaged in that business—How long has your family been connected with that business?

A. Since 1883.

378 Q. Prior to 1883 was your father connected with the Grain Drill busin-ss?

A. No, sir.

Q. He is dead, I believe?

A. Yes, sir.

Q. Do you know how long the Superior Drill has been manufactured at Springfield, Ohio, under that name?

A. Since 1866.

Q. The evidence has referred to certain changes in the prices made by this defendant Company at various times, were you a member of the Executive Committee changing those prices?

Mr. CARROLL: We object to that.

The COURT: Overrule the objection.

Mr. CARROLL: We except.

A. Yes, sir.

Q. I wish you would state the reasons those price changes were made, Mr. Johnson?

A. At the beginning, the first organization of the Company, the changes were made for the sake of uniformity. Early in the organization, we found that there was a good deal of difference in the prices, and they were made uniform in 1903.

Q. You mean uniformity as between the various machines of each of the brands, or uniformity as between each line of machinery manufactured by the separate Companies?

A. Made uniform as to—To get them within a reasonable difference, or reasonable—To get them uniform as applied to all.

379 Q. Are you referring to the uniformity as between the different lines of Machinery, the Superior, Hoosier, and Empire and so forth, or as a uniformity between the various sizes of the Superior drills?

A. As to the different lines.

Q. Uniformity between the different lines?

A. Yes, sir.

Q. By line, you mean the Superior, Hoosier and so forth?

A. Yes, sir; the Superior, Empire and so forth.

Q. In bringing about that uniformity between the various lines, was there a raise or decrease in the prices, or what was the change?

A. In 1903, there was a general decrease in practically all lines with one exception.

Q. What was that?

A. The Hoosier.

Q. Was that the highest or lowest or middle?

A. The lowest.

Q. What subsequent prices were or price changes were made by the Defendant Company?

A. There were price changes several times, between now and then. And those changes were increases.

Mr. CARROLL: I object to this, merely for the purpose of saving time; Mr. Carr has already filed an itemized statement showing those changes.

Mr. BOWMAN: In view of the objection, I will not pursue the examination further.

380 Q. What has been the situation in this defendant Company with regard to the uniformity of prices, or regular uniformity of prices, with reference to territory in the different parts of the country?

A. What has been the effect?

Q. No, sir; what has been the situation; have the prices of the Company been uniform or not uniform, with regard to territory?

A. They have been uniform.

Q. Of the Combined company?

A. Yes, sir.

Q. When the changes were made; what has been the case in regard to them, as to uniformity in regard to territory?

A. They have been uniform.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Johnson, what other business has Mr. Westcott, that he is acting in, except as acting as Secretary of the American Seeding Machine Company?

A. He is engaged in several lines of business.

Q. Of what other Companies is he an officer?

A. I don't know accurately what offices he holds.

Q. What other business does he manage and look after?

A. He doesn't manage any other business directly. He is connected with other businesses, I would say, in an advisory way only.

Q. What business, and how many?

A. He is connected with the Westcott Carriage Company
381 of Richmond, Indiana.

Q. Who is it named for?

A. Mr. Westcott's father, I believe.

Q. What else?

Mr. BOWMAN: We object to the inquiry into all of his interests in any other institutions.

The COURT: Overrule the objection.

Mr. BOWMAN: We except.

A. The Westcott Carriage & Motor Company; I don't know the title exactly.

Q. What other?

A. I believe he has got an interest in a small Company Called the Ohio Equipment Company.

Q. What other?

Mr. BOWMAN: We object to this.

The COURT: Overrule the objection.

Mr. BOWMAN: We except.

A. I think he is interested slightly in a Company located in New York; I think the Premier Company.

Q. Is he a director in those Companies?

A. I think so.

Q. Of what other Company is he a Director?

A. I don't know.

Q. He is a Director of those three Companies, and Treasurer of the American Seeding Machine Company?

A. Yes, sir.

Q. Does he give any of his time to the other Companies?

382 A. I think such of his time as he gives to them maybe is when the Officers or Directors come to his office. He gives no time to the active management of them personally. I presume he would attend a Directors' Meeting, if he was called upon.

Q. Mr. Buckwalter, what other business is he engaged in?

A. No other business.

Q. Where is he?

A. You mean our Captain Buckwalter, former President?

Q. Yes, sir.

A. At the present time in California.

Q. How long has he been there?

A. Three weeks.

Q. When does he expect to return?

A. I don't know the exact time he expects to stay.

Q. What official position has he with the Company?

A. None.

Q. What salary does he draw?

A. None.

Q. You are one of the four Salaried Officers?

A. Mr. Carr is President, Myself Vice President, Mr. Westcott is Treasurer, and Mr. L. L. Buckwalter is Treasurer, or I mean Secretary.

Q. Does he devote all of his time to the business?

A. Yes, sir; he does.

(And further the witness sayeth not.)

383 B. J. WESTCOTT having been re-called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. Mr. Westcott, have you with you the original records of your office from which the financial statement you made is prepared, or made up?

A. Yes, sir.

Q. Have you figured the total amount of business done by the American Seeding Machine Company, in Barren county for the year 1911?

A. Yes, sir.

Q. November 1910, to November 1911?

A. Yes, sir.

Q. What was the amount?

A. A little over Three Thousand Dollars.

Q. What was the net book profits of the American Seeding Machine Company on that business?

A. About \$425.00.

Q. What was the total amount of business done in the State of Kentucky in that period?

A. About \$90,000.00.

Q. What was the total net book profits on that business, have you figured it?

A. I haven't figured it, but it would amount in the neighborhood of \$10,000.00 for the whole state.

Q. I did not ask you in regard to the fact as to the uniformity of the prices of the American Seeding Machine Company
384 as to territory covered by its business, what is that?

A. The prices were uniform in all of the territory.

Q. Would that be true with the price changes?

A. Yes, sir.

Q. You gave the date of the purchase of the Mast Property, the other day, have you any record of that date, that could be ascertained?

A. Yes.

Q. What have you?

A. I have a certified copy of the order of the United States Court.

Q. Directing the receiver—

A. To dispose of the property and accepting our proposition.

Q. Have you that?

A. Yes, sir.

Q. What is the date shown by that record?

A. February 19th, 1910; 1911—February 19th, 1911.

Q. From that record, you would give the date as February, 1910?

A. Yes, sir.

Q. You spoke of the disposition of some of the preferred stock of the New Jersey Corporation for Cash at par?

A. Yes, sir.

Q. Was any of that stock taken by the then stockholders?

A. Yes, sir.

Q. Was it taken uniformly among them?

385 A. Not exactly.

Q. Each stock holder take some?

A. Not the entire number; but practically all.

Q. For cash at par?

A. Yes, sir.

Q. How was—How much of it was taken?

A. \$250,000.00.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. This \$250,000.00 you spoke of, was part of the \$300,000.00 in excess of the \$6,034,000.00?

A. Yes, sir.

Q. The total issue?

A. Was \$6,034,000.00.

Q. And afterwards \$300,000.00 was issued?

A. It was authorized.

Q. Was the total issue of the New Jersey stock only \$6,034,000.00?

A. At the time of organization.

Q. There was subsequently issued \$300,000.00?

A. Yes, sir.

Q. And \$250,000.00 of that was taken by the stock holders?

A. Yes, sir.

Q. Was that issue exactly \$300,000.00?

A. No, it was over \$300,000.00?

Q. Are you able to give the amount?

A. It was a little above \$300,000.00, \$325,000.00 I think.

Mr. BOWMAN: We will rest here.

386 The COURT: Are you through all around?

Mr. CARROLL: We are through.

Mr. BOWMAN: Wait a minute, I would like to re-call Mr. Westcott.

The COURT: Very well.

Mr. B. J. WESTCOTT having been re-called as a witness on behalf of the defendant, and having been duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. BOWMAN, of counsel for defendant:

Q. In stating the profits of the Company on the business done in Barren county at \$420.00, how did you arrive at that?

A. I took the proportion of the business done in Barren County, which was \$3,300.00, in proportion to the total business done in all of the territory which was \$4,556,000.00, and that give fifty six one thousandth per cent of the total business, which was done in Barren county, and the net profits for the year were on the \$4,556,000.00 was \$638,000.00, as I have before testified; and I took the proportional profit which was sixty six one thousandth of a per cent, as representing the profits on the business done in Barren county.

Q. Would that be the real profits on the business in Barren county; would that be the actual, real profits?

A. Only as a measure between the average total business
387 done in all of the territory.

Q. What would be necessary to get the real profits on the business in Barren county, as measured by its real and——?

A. It would be necessary to figure the travelers, the proportion of their time spent here, and his expenses on the several trips here. It would necessitate figuring exactly what it cost to make the machines sold in here to make that \$3,300.00.

Q. Would that process increase or decrease the Barren county profits?

A. It would be necessary to figure the travelers, the proportion Barren county, and in Kentucky, being less than the average, and the expense of this business being larger per cent to that of the average per cent obtaining over the territory, it would naturally reduce the profits. The profits in Barren county would be less than the average owing to its lesser volume.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Of course, Mr. Westcott, if you only had the business in Barren County, and depended upon it alone, you couldn't run your business?

A. No sir.

Q. Or if you only had the business of any one State?

A. No, sir.

Q. You transact business over the country, and proportion the cost and profits?

388 Q. In the way you indicated?

A. Yes, sir.

(And further the witness sayeth not.)

Mr. BOWMAN. That is all.

The COURT. Are you through all around.

Mr. CARROLL: We are through.

Mr. BOWMAN: We desire to offer the same instructions as were offered by us at the close of the evidence offered by the plaintiff.

Mr. CARROLL: To which we object.

The COURT: I sustain the objection to these instructions.

Mr. BOWMAN: To which we except.

(Said instructions here offered, and which were offered at the close of the evidence offered by the plaintiff were numbered 1 and 2 respectively and are as follows:)

"No. 1. The Court instructs the jury to find defendant not guilty."

"No. 2. The defendant moves the court to instruct the jury to find it, the defendant, not guilty, upon the ground that the only transaction of the defendant during the year preceding the filing of the petition and the bringing of this action shown by the evidence are transactions of inter-state commerce and that as applied
389 to such transactions the Statutes of Kentucky upon which the action is founded are void, because in conflict with the commerce clause of the constitution of the United States, Viz: Section eight of Art. one thereof, and further upon the failure of proof."

390 STATE OF KENTUCKY,
Barren Circuit Court:

I, Sam W. Eskew, Special Official Stenographer for the Barren Circuit Court, do certify that by an order of said Court I was directed to report the foregoing case; that the foregoing transcript containing (370) pages of typewritten matter is a true and correct copy of all the evidence introduced and heard and offered to be introduced and rejected, and all exceptions, objections and avowals, concerning the same as well as all papers and exhibits offered to be or used as evidence in the trial.

Witness my hand this the 31st day of July, 1912.

SAM W. ESKEW,
Special Official Stenographer Barren Circuit Court.

Examined and approved this 3d day of August, 1912.

SAM'L E. JONES,
Judge Barren Circuit Court.

391 With the foregoing transcript of record and evidence the appellant filed the following statement of parties, &c.,

Court of Appeals of Kentucky.

THE AMERICAN SEEDING MACHINE COMPANY, Appellant,

vs.

THE COMMONWEALTH OF KENTUCKY, Appellee.

The judgment appealed from was rendered in the Barren Circuit Court at its July term 1912—and on the 12th day of July 1912—and can be found on page 10 of this record.

Neither summons or warning order desired.

J. E. BOWMAN,

PORTER & SANDIDGE,

*Counsel for Appellant.*F. E. DAUGHERTY, *Bardstown, Ky.,*CHAS. CARROLL, *Louisville, Ky.,*BAIRD & RICHARDSON, *Glasgow, Ky.,**Counsel for Appellee.*

392 The appellant also filed with the record eight original exhibits. These exhibits are copied into the Bill of Evidence and will be found as indexed.

Afterwards, at a Court of Appeals held in and for the Commonwealth of Kentucky, at the Capitol in Frankfort, Ky., on the 16th day of September, 1912, the following order was made, to-wit:

AMERICAN SEEDING MACHINE COMPANY

vs.

COMMONWEALTH OF KENTUCKY.

Barren.

Came the appellant by counsel and filed grounds and moved the Court for oral argument herein, which motion is submitted.

The following are the grounds for oral argument filed by the foregoing order.

393 Court of Appeals of Kentucky.

THE AMERICAN SEEDING MACHINE COMPANY, Appellant,

vs.

THE COMMONWEALTH OF KENTUCKY, Appellee.

Motion for Oral Argument.

Now comes The American Seeding Machine Company, the appellant herein and moved the court to grant it an oral argument in this case.

The questions it desires to argue orally are: First, that there was a failure of proof by the Appellee, and the verdict and judgment are not sustained by evidence and are flagrantly against the evidence, for the following reasons among others:

(a) No sale by the appellant of its goods in Barren County within one year prior to the bringing of this action was shown.

(b) The raises in prices which were shown by the evidence were not due to the combination in question; since the first act of said combination relating to prices was to reduce the same, and no change in prices was thereafter made for three years; and the combination secured no such control as would enable it to raise prices beyond real values.

(c) The raises in prices which were shown were not beyond real values, as the same were fully justified by increased costs of producing and marketing the goods, and by changes in construction costing more to manufacture, and were necessary to enable Appellant to carry on its business, as shown by its complete financial statement setting forth all details of its business, including profits 393½ and dividend to stockholders, and disclosing a lack, rather than an excess, of reasonable return on capital.

Furthermore, the Appellant's prices have always been uniform, i. e. the prices at which it sold to customers in Barren County were as low as its prices to customers in Ohio or Indiana, or in any other part of the United States, or in foreign countries; even tho in many parts of the United States it controlled but a small portion of the trade.

Second: The trial court erred in refusing to give to the jury each of the instructions requested by the Appellant and numbered 4, 5, 6, 7, 8 and 9, and found on pages 15, 18, 19 & 20 of the Transcript; and the Court also erred in giving instructions 1 & 2 requested by the appellee and found on page 16, 17 & 18 of the transcript.

Third: That the only transactions of the Appellant during the year preceding the institution of this action shown by the evidence are acts of interstate commerce, and that, as applied to such transactions, the statutes of Kentucky upon which this action is founded are void, because in conflict with the commerce clause of the constitution of The United States, viz: Sec. 8, Art. 1.

Fourth: That sections 3915 and 3941a of the Kentucky Statutes are in conflict with the constitution of the United States, and particularly with the fifth and fourteenth amendments thereof; because (a) said acts operate to deny to this appellant the equal protection of the law, (b) because said sections operate to deprive this defendant of its property without due process of law.

In case the foregoing motion is granted, Appellant respectfully requests a hearing at the earliest date after October 1st. next as the convenience of the Court will permit.

HUMPHREY & HUMPHREY,
PORTER & SANDIDGE,
J. E. BOWMAN,

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For Appellant.

The Commonwealth of Kentucky, Appellee herein, joins in the above motion for oral argument.

Attorney for Appellee.

The Commonwealth's Attorney is willing that this case be orally argued.

FRANK E. DAUGHERTY,
Com. Att'y, 10th Judicial District.

395 Afterwards, at a Court of Appeals held as aforesaid on the 19th. of September, 1912, the following order was entered, to-wit:

AMERICAN SEEDING COMPANY
vs.
COMMONWEALTH OF KENTUCKY.

From Barren.

The Court being sufficiently advised, the motion for oral argument herein is sustained.

Afterwards, at a Court of Appeals held as aforesaid, on October 3, 1912, the following order was entered, to-wit:

AMERICAN SEEDING MACHINE CO.
vs.
COMMONWEALTH OF KENTUCKY.

From Barren.

This case coming on to be heard was argued by Charles Carroll for appellee and J. E. Bowman for appellant and submitted.

Afterwards, at a Court of Appeals held as aforesaid on March 4th., 1913, the following orders and judgments were entered herein, to-wit:

AMERICAN SEEDING MACHINE COMPANY, Appellant
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from the Barren Circuit Court.

The Court being sufficiently advised, it seems to them there is no error in the judgment herein. It is therefore considered that said judgment be affirmed and that appellee recover of appellant 10% damages on the amount of the judgment superseded herein
396 which is ordered to be certified to said Court.

Whole Court sitting.

It is further considered that appellee recover of appellant its costs herein expended.

The said Court of Appeals at the same time, to-wit March 4, 1913, delivered an opinion herein which is in words and figures following, to-wit:

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Court of Appeals of Kentucky.

March 4, 1913.

AMERICAN SEEDING MACHINE COMPANY, Appellant,

vs.

COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Barren Circuit Court.

Opinion of the Court by Judge LASSING, affirming:

This is an appeal from a judgment of the Barren Circuit court upholding the verdict of a jury finding the American Seeding Machine Company guilty of violating sections 3915 and 3941-a of the Kentucky Statutes, commonly known as the anti-trust laws of this State, and fixing its punishment at a fine of \$500.00. The proceeding was by penal action. The petition charges that, within the year next before the institution of this suit, the American Seeding Machine Company, an Ohio corporation, combined with five other named corporations or companies engaged in the manufacture of seeding machinery, and other similar corporations, the names
398 of which were unknown, to control the price of seeding machinery, and, in pursuance to said arrangement, sold and offered for sale seeding machinery in Barren County, Kentucky, above the real value of such machinery. The defendant demurred to the petition. This being overruled, it entered a plea of "not guilty." The case thereupon proceeded to trial, and, at the close of plaintiff's evidence, the defendant moved the court to instruct the jury to find in its favor, upon the idea that these sections of the statutes, under which the prosecution was being conducted, were violative of the Fifth and Fourteenth amendments to the federal constitution, and also because the transactions proven were clearly interstate commerce and protected by section 8 of Article I of the federal constitution. This motion was overruled. Defendant then introduced its evidence, at the conclusion of which, it renewed the motion for a peremptory —, which was again denied. Certain instructions were then offered by the defendant, which the court refused to give, but instead gave to the jury the following instructions:

"No. 1. The court instructs the jury that if they believe from the evidence to the exclusion of a reasonable doubt that the defendant, American Seeding Machine Company, before the filing of the petition herein, entered into or became a member of a pool, trust, combine, agreement, confederation, or understanding with the Hoosier Drill Company, Superior Drill Company, Kentucky Drill Company, Bickford & Hoffman Company, Buckeye Drill Company, or any of said companies, or another company or corporation, for the
399 purpose of regulating, controlling or fixing the price of fertilizers, grain drills, seeders, transplanters, disk harrows, potatoe diggers, potatoe planters or the repairs of same, manufactured or produced, or to be manufactured or produced by them, or any of them, and that the purpose and effect of said pool, trust, combine,

agreement, confederation, or understanding, was to enhance the price of said fertilizers, grain drills, seeders, transplanters, disk harrows, potatoe diggers, or potatoe planters, or either or any of them, above their real value, and if the jury further believe from the evidence beyond a reasonable doubt that the defendant company, in pursuance of and while a member of or a party to, or in any way interested in said pool, trust, combine, agreement, confederation, or understanding, in Barren County, and within one year before the filing of the petition herein, to-wit: within one year before November 16th, 1911, and under the same market conditions that existed before the advance, if any, in price of said machinery or any of it, sold any fertilizer, grain drill, seeder, transplanter, disk harrow, potatoe digger, or potatoe planter, or transplanter, or any of them, or repair of same at more than their real value, then and in that event you should find the defendant guilty, and fix his punishment at a fine in any sum not less than five hundred dollars, and not more than five thousand dollars, in the discretion of the jury."

"No. 2. Although the jury may believe from evidence to the exclusion of a reasonable doubt that the defendant entered
400 into, or became a member of such pool, trust, or combine, as set out in instruction No. 1, and that within twelve months prior to November 16th, 1911, the defendant, while a member of such pool, trust, or combine, sold some fertilizers, grain drills, seeders, transplanters, potatoe diggers, or potatoe planters, mentioned in instruction No. 1, in Barren County, either itself, or through its agent at a greater price than said machine was sold at before the defendant became a member of such pool, trust or combine, as set out in instruction No. 1, yet if they believe from the evidence that the enhancement in the price of said machinery was due solely to the increased cost of labor or material, if any, in producing said machinery, they should find the defendant not guilty."

"No. 3. If the jury have a reasonable doubt of the defendant having been proven to be guilty you should find it not guilty."

After argument, the case was given to the jury, and it, upon consideration, returned the verdict above indicated. Judgment having been entered thereon and the motion and grounds for new trial filed, heard, and overruled, the defendant prayed, and was granted, an appeal, and now seeks a reversal upon four grounds: First, because the acts of the legislature, under which the prosecution was being conducted, are in violation of the Fifth and Fourteenth amendments to the federal constitution; second, because the evidence clearly shows that the transaction complained of was an interstate transaction; third, because the evidence failed to
401 show that appellant entered into any combination such as is inhibited by the statutes, that is, that the combination complained of did create a monopoly; and fourth, because the evidence failed to show that appellant had either sold, or offered to sell, any of its machines in Barren County.

The first ground, relied upon for reversal, to-wit: that sections 3915 and 3941-a are violative of the Fifth and Fourteenth amend-

ments to the federal constitution, was considered at length by this court, in *International Harvester Co. v. Commonwealth*, 131 Ky. 551. We adhere to the opinion there expressed and hold, for the reasons therein stated, that these sections of the Kentucky Statutes are not in conflict with either the Fifth or the Fourteenth amendment to the federal constitution, or with any other provision thereof.

As to the claim that the transaction, out of which the prosecution arose, was an interstate transaction, it is conceded by counsel for appellee that, if it was, the case must be reversed; but, it is earnestly insisted that the contract itself shows that the sale was actually made in this State, whereas, counsel for appellant insist that no sale was made in this State, but that an order merely was taken for certain machines, which did not become effective until it was approved by the company at its office in the State of Indiana. The only evidence offered by appellee to show a sale in Barren County is the following

402 writing, entered into between George D. Rogers, representing the appellant, and Dickey & Co., a firm of merchants at Glasgow, Kentucky.

"The American Seeding Machine Company, incorporated, of Richmond, Indiana, first party, hereby sells and Dickey and Co., of Glasgow, County of Barren, State of Kentucky, second party, hereby buys Hoosier Brand of agricultural implements at the prices and terms stated in this contract, and in the order hereto annexed. In case second party shall dissolve partnership or fail to pay when due any sums owing by it to first party, or for any cause, its financial responsibility shall become impaired, or is not acting in good faith, then said first party may at its option terminate this contract, and all sums owing it by second party shall become immediately due and payable; and it is understood and agreed that the goods furnished under this contract, or proceeds thereof, shall be held for the benefit of first party as collateral security for the fulfillment of all obligations incurred hereunder. It is understood and agreed by second party that first party is not to be held liable for any damage by inability to ship goods ordered under this contract, from causes beyond its control, such as strikes, fires, or any providential interference. No agreements, verbal or otherwise not embodied in this contract shall be binding. This contract is of a continuing nature, and shall cover all goods ordered during the current season of 1911, and shall not be valid until approved by first party at its office in Richmond, Indiana.

403 "In witness whereof, we have hereunto set out hands and seals this 26th day of Nov. 1910. Territory, Glasgow and Vic. Bank, Trigg National Bk. Bank located at Glasgow, Kentucky.

"The American Seeding Machine Company, Incorporated,

"THE AMERICAN SEEDING MACHINE
COMPANY, INCORPORATED,

By GEO. D. ROGERS.

"DICKEY & CO.

By W. E. BYBEE,
H. T. DICKEY,
E. DICKEY.

"Less C. L. F. O. B. cars, Louisville, Ky. Car lot F. O. B. cars, Glasgow, Ky. if shipped in combination. Terms: Spring sales—Net August 1, 1911, subject to discount for cash, of 7% May 1st or 6% June 1st, 1911. Fall sales—Net Jan. 1, 1912, subject to discount for cash of 7% Oct. 1st, or 5% Nov. 1st, 1911. Repairs—25% from printed lists, subject to regular cash discounts. Full settlement to be made by cash or note not later than June 1st, for spring sales, or November 1st for fall sales, as per terms above. 5 Fert. 6 x 8 Sq. Disc. & G. S. A. F. F. C. F. W. W. Horse Hitch \$61.50. 2/1/11. 4 Frt. One Rev. Dis. & Com. Drill B. C. \$10.50.

Order entered Dec. 3, 1910, C. M. Haworth. Quantity Re-
404 bate—Two Horse and larger wheat drills. If second party sells and settled in cash or his purchaser's notes in accordance with contract rebate will be allowed at time of settlement as follows: 5 to 9 inclusive, two horse and larger wheat drills \$.50 each; 10 to 14 inclusive, two horse and larger wheat drills \$1.00 each. 15 to 19 inclusive, two horse and larger wheat drills \$1.50 each. 20 or more two horse and larger wheat drills \$2.00 each. No rebate allowed on drills not settled for in cash or farmer's notes. Different classes of machines can not be combined to obtain rebate. The American Seeding Machine Co. Incorporated, Richmond, Ind. U. S. A."

Each party looks to this writing to establish its position.

The second and fourth grounds, relied upon for reversal, may be considered together, for, if no sale was made in Kentucky as evidenced by the foregoing writing, it is admitted that this transaction was an interstate transaction and not controlled by the sections of the Kentucky Statutes quoted.

As the writing states, it was of a continuing nature and covered, not only the negotiations between the parties for the machines then needed by Dickey & Company, but also estab-
405 lished the basis upon which their dealings, throughout the year, were to be continued. The evidence shows that appellant company furnished printed blanks, upon which these agreements with its patrons throughout the country were recorded. As they formed the basis of its contracts with its patrons, it may be assumed that they were prepared with that care which their importance demanded. As the writing possesses none of the characteristics of an order, the natural presumption is that it was not intended as an order. It has all the distinguishing features of a completed contract, and none of the earmarks of an order. It will be observed that it designates appellant as "party of the first part" and says "it sells," and then designates Dickey & Company as "party of the second part" and says they "buy" certain designated machinery. The trade regulations, governing the parties during the ensuing year, are then set out, and the writing then closes with this statement: "No agreements, verbal or otherwise, not embodied in this contract shall be binding. This contract is of a continuing nature, and shall cover all goods ordered during the current season of 1911, and shall not
406 be valid until approved by first party at its office in Richmond, Indiana." It was signed by each party. An order is merely an offer; it is signed by the wouldbe purchaser only;

it is merely a request, on his part, that he send him, sell him, or ship him, the goods desired; and this request is usually couched in language appropriate to express or convey such desire, such as "please send me," "please ship me," or "I wish to buy etc."; or, where the order has been placed through a soliciting agent of the seller, the natural and usual language would be, "I have ordered through Mr. —, the following goods, etc."; whereas, a contract is an agreement between two parties and results whenever, in their negotiations, their minds meet—that is, when the offer to sell or buy, as the case may be, which one makes, is accepted by the other. Here, we have a written statement saying, as plainly as language can express it, that appellant "sells" and Dickey & Company "buy" designated machinery. If this language means anything, it means that the contracting parties had agreed, their minds had met, and the transaction closed. Throughout the writing, it is termed,
407 a contract, and it is a contract, unless the agent, Rogers, did not have authority to make it.

Just what authority Rogers had, Dickey & Company did not, of course, know. His principal would naturally want to inspect his agreement made for it with its customers, and to see that he was not obligating it for things which he had no right or authority to obligate it; hence the clause at the close of the writing: "This contract * * * shall not be valid until approved by first party at its office in Richmond, Indiana", was inserted. Under this clause, appellant had the right, upon presentation, either to approve or reject the contract, dependent, of course, upon whether or not it was satisfied with its terms and its agent, Rogers, had not exceeded his authority in making it. It was, in due time, presented to
408 the company, and upon its receipt, it wrote Dickey & Company the following letter: "Your contract with our traveler, Geo. D. Rogers, has been received, accepted and approved. Copy enclosed for you to file for future reference". How did appellant then regard the writing? Clearly, not as an order, for the letter says, "Your contract with our traveler, Geo. D. Rogers, has been received, accepted and approved." An order might have been received and accepted, but one would hardly write that an order had been approved; nor would one, at all familiar with business transactions, refer to an order as a contract; nor would appellant, if it had regarded the writing as an order, have referred to it as a contract made with the traveler, Rogers. Not only does the writing show that it was a contract, but the letter of the company, acknowl-
409 edging its receipt, confirms this fact; and this letter, ratifying the contract, had the effect of making valid and binding upon appellant the contract, into which its agent, Rogers, had entered with Dickey & Company, in Glasgow, Barren County, Kentucky, and the contract speaks as of the date when it was made in Glasgow and not as of the date of its ratification in Richmond, Indiana. *Theobald v. Hare*, 8 B. Mon., 39; *Kirkpatrick v. Pease*, 202 Mo., 471; 101 S. W., 651; *Commercial Bank v. Warren* 15 N. Y., 577; and *Story on Agency*, section 244; *Bell v. Waynesboro Borough*, 195 Pa. St., 299.

Appellant's contract evidences a sale by it of certain machinery in Glasgow, Barren County, Kentucky, within the time covered by the suit, and the sale having been completed in Kentucky, the claim that it is an interstate transaction is of no avail.

The only remaining question is, did the organization of appellant company violate the provisions of the Kentucky Statutes under consideration? The evidence shows that, prior to the formation of appellant company, its various constituent companies were actively engaged in selling seeding machinery in Kentucky and were competitors in the sale of seeding machines. In fact, they were practically the only seeding machine companies doing business in
410 this State. One or two other companies are mentioned, in an incidental way, as doing business in Kentucky, but, even from a casual reading of the record, it is apparent that the companies that entered into the combination, resulting in the organization of the appellant company, were the principal seeding machine companies doing business in that part of the State, at least, to which the evidence addresses itself, and the rivalry among them for business was strong. Each company fixed its own prices; some were higher than others; each had its own corps of field agents selling its machines. Immediately upon the organization of appellant company, all competition between them ceased, and uniform prices were established upon their goods.

It is said that there are some fifteen or twenty other seeding machine companies doing business in the United States, and that the business of appellant's constituent companies, at the date of its organization, was but forty five or fifty per cent. of the total business done by seeding machine companies in this country. All this may be true, and yet, the fact remains that, at the date upon which the combination was effected, appellant's constituent companies were the principal seeding machine companies doing business in this State,
and their combination had the effect of removing practically
411 all competition in this business and to give to appellant undisputed control of the seeding machine business in Kentucky. Since the organization of appellant company, the only competition that has existed is that between its agents, in their efforts to see who can sell the most machines, but all for appellant and at a uniform price. No other company is shown to have been an active competitor of appellant company in this State, since its organization. It may be, and doubtless is, true that there are other seeding machine companies capable of supplying large territories with needed seeding machinery, but the evidence does not show that they are competitors for the Kentucky trade, or engaged in the manufacture of seeding machinery suitable to the wants and necessities of the Kentucky farmer. We are not concerned with the result which this combination produced elsewhere, but solely with what effect such combination has had upon trade conditions here in Kentucky, and the evidence undoubtedly shows that, since its organization, appellant has had a practical monopoly of the seeding machine business in this State and was enjoying such distinction at the time this litigation was instituted. Such combinations are not favored in

law and, where not prohibited by state, are condemned as against a sound public policy and as operating in restraint of trade. Merchant's Ice & Cold Storage Co. v. Rohrman, 138 Ky., 530.

412 But, notwithstanding appellant has acquired such control of the seeding machine business, it is not subject to the penalties prescribed by the statutes under consideration, unless its purpose, in thus acquiring control, was to raise the price of the machines, which it manufactured, above their real value, and we, therefore, pass to a consideration of this question.

The evidence shows that, when the appellant company was created in 1903, the Hoosier 6x8 fertilizer disc drill was selling for \$52.00 and the 8 x 8 drill, for \$60.00. The Superior drills, of like size, were then selling for \$54.00 and \$62.00 respectively; the Empire, for \$56.50 and \$64.50; the Kentucky, for \$52.00 and \$30.00; and the B. & H., for \$58.00 and \$66.00 respectively. In the standardization of prices, appellant reduced the price of all these drills to that fixed for the Kentucky and Hoosier, to-wit: \$52.00 and \$60.00. These prices remained in force during the balance of the seasons of 1903 and 1904. The following year, the price of the smaller of said drills was raised from \$52.00 to \$54.00, a flat raise of \$2.00 per drill on all 6 x 8 drills. In 1907, a flat raise of \$1.00 per drill on the 6 x 8 and 8 x 8 drills was made, making the price of these drills \$55.00 and \$61.00 respectively. In 1908, a flat raise of \$4.50 was made on the 6 x 8's and a like raise on the 8 x 8's.

These prices were maintained until 1911, when another flat

413 raise of \$2.00 per drill was made, so that, in 1911, the Kentucky and Hoosier drills which, in 1903, sold for \$52.00 and \$60.00 respectively, were selling at \$61.50 and \$67.50 respectively, a raise of \$9.50 upon the smaller, and \$7.50 upon the larger, of said drills. During this time, according to the testimony of appellant, the business had increased fifty per cent. and, in the financial statement filed, it appears that the sales of the company increased from an average of \$276,000, in round numbers, per month, in 1903, to an average of \$413,000 per month, in round numbers, in 1911. The evidence further shows that the cost of the material which entered into the construction of these machines, while varying somewhat during this interim, was in 1903 practically as high as it was in 1911. Iron, which constitutes the greater part of the material used in their construction, was, if anything, cheaper in 1911 than it was in 1903, while wood was somewhat higher. The price of labor had increased materially in this time, but the increased price of labor required in the manufacture of these machines had been more than offset by the saving to the company in the marketing of the machines. One field man, in 1911, did the work which, prior to the combination, several were required to do. Not only so, but the business had been centralized, old plants abandoned and new ones built at places where transportation facilities were better and material more easy of access. So that, when the evidence,

414 as a whole, is considered, it is apparent that machines could, in 1911, be produced at less cost, per machine, than they were in 1903. There is no showing as to what the actual cost of

these machines is per machine. This information could doubtless have been furnished by appellant, but it did not see fit to do so. Appellee contented itself with showing that the cost of the materials, which entered into the construction of these machines, was not materially higher in 1911 than it was in 1903; that appellant had effected a great saving in the marketing of its machines; and that it was enabled, by reason of the increased output, together with certain improvements looking toward the centralization of its plants and the standardization of certain parts of its machines, to produce them at a less cost, per machine, than it did in 1903. Basing its argument upon this idea, it is insisted that the flat raises in the price of these machines, from time to time, during the interval between 1903 and 1911, were wholly unjustified by conditions, and were evidently made in furtherance of the purpose for which the combination was effected.

Since the combination was formed, appellant's business has been greatly enlarged and much improved. The record is silent
415 as to how much money has been required to make these extensions and betterments. It has also pressed its business into new territory, and, during these years, has been adding new fields for the sale of its machines. Just how much money has been expended in this way is not shown, but it is apparent that, inasmuch as old plants have been abandoned and new and larger ones have been constructed and field operations have been greatly enlarged and the business extended, much money has been used for these purposes. The record shows that but \$325,000 of new money has been put into the business, since its organization, and hence, the bulk of these improvements and betterments have necessarily been paid for out of the earnings of the company. The financial statement furnishes no basis for determining how profitable the business has been, further than that it shows that, during the years covered by its corporate existence, it has regularly, with the exception of one year, paid a dividend upon its stock, and in 1911 had accumulated a surplus of \$1,600,000 as against \$116,000 in 1903. The record shows that the sales, in 1911, amounted, in round numbers, to \$4,956,000, and for the same year the expenses were \$1,244,000. The report does not show what was done
416 with this sum representing the difference between the sales and the expenses; nor are we advised as to what items are covered by the term "expense." If the meaning of this term, as used by appellant in the conduct of its business, is as broad and comprehensive as that which is generally given to it, then it should include every item of expense of every character and would represent not only the cost of the labor and material, used in the manufacture of these machines, but also the cost incident to their marketing; and, if this is true, the profit realized by appellant in 1911 was simply enormous. If this is not true, and other items of expense were incurred by appellant which were not included in this account, we are furnished no guide by which we can determine what profit was realized out of the business. In the financial statement, there is an item termed "gross revenue for 1911" amounting to

\$2,082,000. We do not know how the figures, making this item, are arrived at. If the sales account represents the money received by appellant for the sales of its machines during 1911 and it had no other source of revenue, then this item should be the gross revenue, that is, the total receipts, and from it should be deducted the expense, and the difference, less a proper charge for depreciation, would be the net earning of the company for that year. If the account was presented in this form, we could readily determine whether or not appellant's machines were sold, or offered for sale at a price above their real value. But, having been furnished with no means of ascertaining that the real value of the machines, in 1911, was more than it was in 1903, the conclusion is inevitable that the raise in the prices of these several machines has not been justified by any change in conditions, due to the increased cost of material or to the advance in the price of labor. If these machines were selling at their real value in 1903—and in the absence of any showing to the contrary, we presume they were—then the effect of the combination was to advance the price, during the several periods when these advances were made, and to maintain that price in 1911 above the real value of said machines. Upon this showing, the jury was warranted, under the instructions, in finding that the purpose of the organization of appellant was to raise the price of its products above their real value.

The instructions given presented the issue, and, as the trial is shown to have been conducted without substantial prejudice to appellant's rights, the judgment is affirmed. The whole court sitting.

HUMPHREY, MIDDLETON & HUMPHREY,
Louisville, Ky.;

J. E. BOWMAN, *Springfield, Ky.;*

PORTER & SANDIDGE, *Glasgow, Ky., For Appellant;*

JAMES GARNETT, *Att'y Gen., Frankfort;*

CARROLL & CARROLL, *Louisville, Ky.;*

T. C. CARROLL,

FRANK E. DAUGHERTY, *Bardstown, Ky.;*

BAIRD & RICHARDSON, *Glasgow, Ky., For Appellee.*

418 Afterwards, to-wit on the 18th. day of April 1913 the appellant, the American Seeding Machine Company, filed in the office of the Clerk of the Court of Appeals of Kentucky, its petition for writ of error with the order allowing same by the Chief Justice of said Court, which are hereto attached in words and figures following, to-wit:

419 *Petition for Writ of Error from the Supreme Court of the United States to the Court of Appeals of Kentucky.*

THE AMERICAN SEEDING MACHINE COMPANY, Plaintiff in Error.

v.

THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

To the Honorable J. P. Hobson, Chief Justice of the Court of Appeals of Kentucky:

Now comes the American Seeding Company, Plaintiff in error and Petitioner herein, and alleges that it is, and at all the times hereafter mentioned was, a corporation organized under the laws of the State of Ohio, and a citizen of The United States of America; having its home office and one of its factories at Springfield, Ohio, and a branch office and another factory at Richmond, in the State of Indiana, and having no office or location elsewhere, and being engaged solely in the manufacture of goods at said two places, and not elsewhere, and in shipping the same to customers throughout The United States and in foreign countries pursuant to orders or contracts of purchase previously obtained therefor: that in the above entitled case on the 4th day of March, A. D. 1913, final judgment was rendered against your Petitioner by The Court of Appeals of Kentucky, which is the highest Court of law or equity in the said State of Kentucky, wherein it was adjudged that the provision of Sections 3915 and 3941A of the Kentucky Statutes, (which prescribe a penalty for the sale of their products by trusts, combinations or pools at prices above their real value) were not in conflict with the Fifth and Fourteenth Amendments of the Constitution of The United States, as contended by said Petitioner.

It was also then adjudged by said Court of Appeals that the provisions of said Sections of the Kentucky Statutes applied to
420 the only proved transaction of Petitioner, in sending its traveling agent into Barren County, Kentucky, and through him there entering into a contract with a citizen and resident of said County for the sale of the said Petitioner's goods to be shipped from its factory at Richmond in the State of Indiana, where it manufactured the same, to said customer in said State of Kentucky, pursuant to said contract; the said contract not to be valid or binding until approved by Petitioner at its office in Richmond, Indiana.

The said Court of Appeals then adjudged said transactions not to constitute interstate commerce, and denied to this Petitioner the protection and immunity it claimed in the premises under the Commerce Clause, viz. Section 8 of Article 1, of the Constitution of The United States.

The said decisions and judgment were rendered against this Petitioner by said Court of Appeals in affirming a judgment of the Circuit Court of Barren County, Kentucky, where this action was begun against Petitioner to recover a penalty for alleged violation of said Sections of the Kentucky Statutes, and in which Court the said Federal questions were duly made by Petitioner by demurrer

to the petition and by requests for peremptory and other instructions to the jury, and which said Circuit Court decided each and every of said questions against the Petitioner and rendered final judgment against it, which judgment was affirmed by said Court of Appeals of Kentucky, to which Petitioner duly appealed said case, all of which will more fully appear from the record and proceedings in said case.

Your petitioner, therefore, respectfully shows that in the above entitled suit in the highest Court of the State of Kentucky in which a decision in said suit could be had, there was drawn in question the validity of a Statute of the State of Kentucky on the ground of repugnancy to the Constitution of The United States, and the decision of said Court was in favor of the validity of such State Statute: and further a privilege and immunity was claimed by your Petitioner under the Constitution of The United States, and the decision of said Court of Appeals was against the said privilege and immunity; and that such decision of both of said Federal questions was necessary to the judgment rendered by the said State Court; and your Petitioner being greatly damaged by such decision is entitled to have the same reviewed by the Supreme Court of The United States.

Wherefore your Petitioner prays that a writ of error to said Court of Appeals be allowed; that citation be granted and signed; that the bond herewith presented be approved, and that upon compliance with the terms of the Statute in such cases made and provided said bond and writ of error may operate as a supersedeas, that the errors complained of may be reviewed in the Supreme Court of The United States and the judgment aforesaid of said Court of Appeals of Kentucky, be reversed.

THE AMERICAN SEEDING MACHINE COMPANY,
By Its Attorney in Law and in Fact.

J. E. BOWMAN,
ALEXANDER POPE HUMPHREY,
Attorneys and of Counsel for Petitioner.

The writ of error as prayed for in the foregoing petition is hereby allowed this 18 day of April, A. D. 1913, the writ of error to operate as a supersedeas, and the bond for that purpose is fixed at the sum of \$2,000.00. Dated at Frankfort, Ky., this 18 day of April, A. D. 1913.

J. P. HOBSON,
Chief Justice Ky. Court of Appeals.

Filed Apr. 18, 1913. Rob't L. Greene, Clerk Court of Appeals.

- 422 *Order Allowing Writ of Error from the Supreme Court of the United States to The Court of Appeals of the State of Kentucky.*

THE AMERICAN SEEDING MACHINE COMPANY, Plaintiff in Error.

v.

THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

The above entitled matter coming on to be heard upon the petition of the Plaintiff in error for a writ from the Supreme Court of The United States to the Court of Appeals of the State of Kentucky, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of The United States the questions presented by the record in said matter.

It is ordered that a writ of error be, and is hereby, allowed to this Court from the Supreme Court of The United States, and that the bond presented by said petitioner be, and the same is hereby, approved, and it is further ordered that said writ of error operate as a supersedeas.

J. P. HOBSON,

Chief Justice Ky. Court of Appeals.

Filed Apr. 18, 1913. Rob't L. Greene, Clerk Court of Appeals.

- 423 At the same time, to-wit, on April 18, 1913, the appellant and plaintiff in error filed in said Clerk's office its writ of error, which is attached hereto as part hereof.

- 424 *Writ of Error From the Supreme Court of the United States to the Court of Appeals of the State of Kentucky.*

THE AMERICAN SEEDING MACHINE COMPANY, Plaintiff in Error,

v.

THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of American to the Honorable the Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Appeals of the State of Kentucky, before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between the American Seeding Machine Company and the Commonwealth of Kentucky, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, The United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute

of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of The United States, and the decision was in favor of such their validity; or where some right, title, privilege or immunity was claimed under the
 425 constitution or a treaty or statute of, or commission held or authority exercised under, The United States, and the decision was against the title, right, privilege or immunity especially set up or claimed by the American Seeding Machine Company under such Constitution, treaty, statute, commission or authority, a manifest error hath happened, to the great damage of the American Seeding Machine Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of The United States, together with this writ, so that you have the same at Washington on the 18th day of May 1913, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of The United States should be done.

Witness the Hon. Edward Douglass White, Chief Justice of the said Supreme Court, the 18th day of April in the year of our Lord nineteen hundred and thirteen.

[Seal United States of America, Eastern Kty. Dist. Court.]

J. W. MENZIES,

Clerk U. S. Dist. Court, Eastern Dist., Ky.

By CHAS. N. WIARD, D. C.

Allowed:

J. P. HOBSON,

Chief Justice, Ky. Court of Appeals.

Filed Apr. 18, 1913. Rob't L. Greene, Clerk Court of Appeals.

426 At the same time, to-wit on April 18, 1913, the appellant and plaintiff in error filed in said Clerk's office its writ of error bond, which is in words and figures following, to-wit:

On Error From the Supreme Court of the United States to the Court of Appeals of the State of Kentucky.

THE AMERICAN SEEDING MACHINE COMPANY, Plaintiff in Error,

vs.

THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

Bond.

Know All Men By These Presents, That we, The American Seeding Machine Company, as principal, and The Title Guaranty &

Surety Company as surety, are held and firmly bound unto The Commonwealth of Kentucky in the sum of (2) Two Thousand Dollars, to be paid to the said obligee, its successors, representatives and assigns; to the payment of which well and truly to be made we bind ourselves, and our successors, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of April, A. D. 1913.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of The United States to reverse the judgment rendered in the above entitled action by the Court
427 of Appeals of the State of Kentucky:

Now, therefore, the condition of this obligation is such that, if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

[SEAL.] THE AMERICAN SEEDING MACHINE CO.,

By FRANK C. JOHNSON, *Vice-Pres't.*

THE TITLE GUARANTY & SURETY
COMPANY,

By CHURCHILL HUMPHREY, *Att'y in Fact.*

Signed, seal and delivered by the American Seeding Machine Company in presence of:

J. E. BOWMAN.

L. I. GOODFELLOW.

Signed, sealed and delivered by The Title Guaranty & Surety Company in presence of:

UNITED STATES OF AMERICA,

State of Ohio, County of Clark, ss:

On this 4th day of April, before me personally appeared Frank C. Johnson, who being duly sworn deposes and says that he is the Vice President of the American Seeding Machine Company, and is acting as President thereof, the President of said Company being now absent from The United States; that the seal affixed to the foregoing
instrument is the corporate seal of said corporation, and that
428 said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said Frank C. Johnson acknowledged said instrument to be the free act and deed of said corporation, and his free act and deed as said Vice President.

[SEAL.]

W. H. GRIFFITH,

Notary Public Clark County, Ohio.

Approved:

J. P. HOBSON,

Chief Justice Ky. Court of Appeals.

Filed Apr. 18, 1913. Rob't. L. Greene, Clerk Court of Appeals.

Know All Men By These Presents: That The Title Guaranty & Surety Company, of Scranton, Pennsylvania, a corporation organized under the laws of the State of Pennsylvania, has made, constituted and appointed, and by these presents does hereby make, constitute and appoint Churchill Humphrey its true, sufficient and lawful attorney, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as surety, a bond or undertaking as follows:

A bond in the Court of Appeals of Kentucky on behalf of the American Seeding Machine Company, being a bond to supersede the judgment of the Court of Appeals of Kentucky rendered against the American Seeding Machine Company in re American Seeding Machine Company vs. Commonwealth of Kentucky, being a bond on writ of error from said judgment from the Supreme Court of the

United States to the Court of Appeals of Kentucky, the
429 original judgment in said action having been rendered by the Circuit Court of Barren County, Kentucky, hereby giving its said authority full power and authority to do everything whatsoever requisite and necessary to be done for the purpose of making, executing and delivering such obligation as fully as the officers of said The Title Guaranty & Surety Company, could do if personally present, and hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue hereof, but reserving to itself full power of substitution and revocation.

In Witness Whereof, The Title Guaranty & Surety Company has caused its corporate seal to be hereunto affixed, and these presents to be duly executed by Samuel K. Bland, General Agent, at Louisville, Kentucky, on this 15th day of April, 1913.

[SEAL.]

THE TITLE GUARANTY & SURETY
COMPANY,

By SAMUEL K. BLAND,

General Agent at Louisville, Kentucky.

Filed Apr. 18, 1913. Rob't L. Greene, Clerk Court of Appeals.

At a regular meeting of the Executive Committee of the Board of Directors of The Title Guaranty & Surety Company, of Scranton, Pennsylvania, held at the office of the Company in the City of Scranton, on the Fourth day of April, 1908, the following Resolution was adopted:

"Resolved, That Samuel K. Bland, General Agent of this Company at Louisville, in the State of Kentucky, be and he is authorized and empowered to make, execute and deliver in behalf of the Company, unto such person or persons, in the State of Kentucky, as he may select, its power of attorney constituting and
430 appointing each such person its Attorney-in-Fact, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as Surety, any particular bond or undertaking that may be required in the State of Kentucky, the nature of such bond or undertaking to be in each case specified in such power of attorney."

STATE OF PENNSYLVANIA,

County of Lackawanna, ss:

I, Fred'k K. Tracy, Assistant Secretary of The Title Guaranty & Surety Company, hereby certify that I have compared the foregoing copy of resolution with the original thereof, as recorded in the Minute Book of said Company, and that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the Company at the City of Scranton, Pennsylvania, this 27th day of April, 1908.

[SEAL.] FRED'K K. TRACY,
Assistant Secretary.

STATE OF KENTUCKY,

County of Jefferson, ss:

On this day personally appeared before me, a Notary Public in and for the State and County aforesaid, Samuel K. Bland, known to me to be the General Agent of The Title Guaranty & Surety Company at Louisville in the State of Kentucky, and as such he did thereupon acknowledge and deliver the foregoing instrument of writing as and for the act and deed of The Title Guaranty & Surety Company.

431 Witness my hand and seal, this 15th day of April, 1913.
[SEAL.] WM. G. GAUNT,
N. P. J. C.

My notarial Commission will expire Jan. 16th, 1916.

432 At the same time to-wit, April 18, 1913, the appellant and plaintiff in error filed in the Clerk's office of said Court its assignment of errors, which is in words and figures following, to-wit:

On Writ of Error from the Supreme Court of the United States to the Court of Appeals of Kentucky.

THE AMERICAN SEEDING MACHINE COMPANY, Plaintiff in Error,
v.

THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

Assignment of Errors and Prayer for Reversal.

The American Seeding Machine Company, in connection with its petition for a writ of error herein, makes the following assignment of errors which it claims are manifest in the record and final judgment of the Court of Appeals of the State of Kentucky in the above entitled suit, and upon which it relies for a reversal of said judgment.

First. Said Court of Appeals erred in adjudging and deciding that Sections 3915 and 3941A of the Kentucky Statutes are not repugnant to the Constitution of The United States, particularly the

Fifth and Fourteenth Amendments thereof, as operating to deny to this petitioner, Plaintiff in error, the equal protection of the law, and to deprive this defendant of its property and subject it to a fine without due process of law.

Second. Said Court of Appeals erred in adjudging and deciding that the trial Court, the Circuit Court of Barren County, 433 Kentucky, did not err in overruling the demurrer of this petitioner interposed to the petition and based upon the grounds aforesaid, which demurrer is as follows:

"The defendant demurs to the plaintiff's petition in the above entitled action upon the ground that the same does not state facts sufficient in law to constitute a cause of action, and for the following reasons among others:

Sections 3915 and 3941A, of the Kentucky Statutes, as construed and applied by the Court of Appeals of Kentucky, and upon which this action is based, are in conflict with the Constitution of the United States, and particularly with the 5th and 14th amendments thereof, because: (A) Said acts as so construed operate to deny to this defendant the equal protection of the law: (B) Said acts as so construed operate to deprive the defendant of its property, and to subject it to fine, without due process of law."

That said Court of Appeals erred in deciding that said trial Court did not err in refusing to instruct the jury peremptorily in favor of petitioner as requested by it on the ground aforesaid; and did not err in overruling the seventh ground of petitioner's motion for a new trial duly made in said trial Court; which seventh ground is as follows:

"Because section- 3915 and 3941A of the Kentucky Statutes, as construed by the Court of Appeals of Kentucky, and upon which this action is based, are in conflict with the Constitution of the United States, and particularly with the fifth and fourteenth amendments thereof, because (a) said acts as so construed operate to deny this defendant the equal protection of the law, (b) said acts as construed operate to deprive this defendant of its property and subject it to a fine without due process of law."

434 Third. Said Court of Appeals erred in adjudging and deciding that the said Sections 3915 and 3941A Kentucky Statutes, as interpreted and applied in this case to the Acts of this petitioner, are not repugnant to Section 8 Article 1 of the Constitution of The United States.

Fourth. Said Court of Appeals erred in adjudging and deciding that the action of this petitioner (then as now a corporation of Ohio, having its home office and a factory at Springfield, Ohio, and a branch office and another factory at Richmond, Indiana, and having no office or location elsewhere, and being engaged solely in the manufacture of goods at said two places, and not elsewhere, and in shipping the same therefrom to customers throughout the United States and in foreign countries, pursuant to orders or contracts of purchase previously obtained) in sending its traveling agent into Barren County, Kentucky, and through him there entering into a contract subject to its approval at its office in Richmond, Indiana,

with a citizen and resident of said Barren County for the sale to him of petitioner's goods to be shipped from its said factory at Richmond, Indiana, into the State of Kentucky, to said customer, pursuant to said contract, was not a transaction of interstate commerce, and that said Section- 3915 and 3941A Kentucky Statutes applied to such transaction, and that this petitioner was not entitled to the immunity it claimed in the premises under the **Commerce Clauses** (Sec. 8, Art. 1) of the Constitution of The United States.

Fifth. Said Court of Appeals of Kentucky erred in adjudging and deciding that the trial Court, the Circuit Court of Barren County, Kentucky, did not err in refusing to instruct the jury as requested by this petitioner at the conclusion of the evidence for the plaintiff below, as follows:

435 "The defendant moves the Court to instruct the jury to find it, the defendant, not guilty, upon the ground that the only transaction of the defendant during the year preceding the filing of the petition and the bringing of this action shown by the evidence are transactions of inter-state commerce and that as applied to such transactions the Statutes of Kentucky upon which the action is founded are void, because in conflict with the commerce clause of the Constitution of the United States, viz: Section eight, of Article one thereof, and further upon the failure of proof."

Said Court of Appeals erred in adjudging and deciding that said trial Court did not err in refusing to give to the jury the same instruction when requested by this petitioner at the conclusion of all the evidence, and that said trial Court did not err in overruling the sixth ground of the motion of the petitioner for a new trial, which sixth ground is as follows:

"Because the only transaction of defendant during the year preceding the filing of the petition and bringing of this action, as shown by the evidence, are transactions of interstate commerce and that as applied to such transactions the Statutes of Kentucky upon which the action is founded are void because in conflict with the commerce clause of the Constitution of The United States, to-wit: Section eight, of Article One, thereof."

Said Court of Appeals erred in deciding each of the above mentioned Federal questions against this petitioner, and in affirming the judgment of the Circuit Court of Barren County, which required for its affirmance such decision of each of said questions.

Wherefore said The American Seeding Machine Company prays that the judgment and decision of said Court of Appeals of
436 Kentucky, and of said Circuit Court of Barren County, may be reversed and held for naught, and that it may be restored to all things it has lost by reason thereof.

J. E. BOWMAN,

ALEXANDER POPE HUMPHREY,

*Attorneys and Counsel for The American Seeding
Machine Company, Plaintiff in Error.*

Filed Apr. 18, 1913. Rob't L. Greene, Clerk Court of Appeals.

437 At the same time, to-wit on April 18, 1913, the appellant and plaintiff in error filed in said Clerk's office its Citation with service of same, which is attached hereto as part hereof:

438 On Error from the Supreme Court of the United States to the Court of Appeals of the State of Kentucky.

THE AMERICAN SEEDING MACHINE COMPANY, Plaintiff in Error,
v.
THE COMMONWEALTH OF KENTUCKY, Defendant in Error.

Citation.

UNITED STATES OF AMERICA, *ss*:

To the Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of The United States at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Appeals of the State of Kentucky, wherein The American Seeding Machine Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. P. Hobson, Chief Justice of the Court of Appeals of Kentucky, this 18 day of April, A. D. 1913.

J. P. HOBSON,

Chief Justice Ky. Court of Appeals.

Copy of the within Citation received this 18 day of April, A. D. 1913, at the office of the undersigned.

JAMES GARNETT,

Attorney General of the State of Kentucky.

[Endorsed:] Filed Apr. 18, 1913. Rob't L. Greene, Clerk Court of Appeals.

439 THE COMMONWEALTH OF KENTUCKY,
The Court of Appeals, set:

In obedience to the commands of the attached Writ of Error, I hereby transmit to the Supreme Court of the United States, a full and complete transcript of the entire record with all things touching the same in the case of American Seeding Machine Company, Appellant, vs. Commonwealth of Kentucky, Appellee, as the same appears from the records and files of my office.

In testimony whereof I have hereunto set my hand and affixed

the seal of my office. Done at Frankfort, Kentucky, on this the 29th day of April, A. D., 1913.

[Seal Kentucky Court of Appeals.]

ROBT L. GREENE,

Clerk of the Court of Appeals of Kentucky.

Fee for Transcript \$99.90.

Endorsed on cover: File No. 23,695. Kentucky Court of Appeals. Term No. 556. The American Seeding Machine Company, plaintiff in error, vs. The Commonwealth of Kentucky. Filed May 16th, 1913. File No. 23,695.

14
No. 175

Office Supreme Court, U.

FILED

SEP 30 1914

JAMES D. MAHER
CLERK

Supreme Court of the United States

October Term, 1913

~~100-555~~

The American Seeding Machine Co.,

Plaintiff in Error,

—vs.—

The Commonwealth of Kentucky,

Defendant in Error.

Brief for Plaintiff in Error

J. E. BOWMAN,

Attorney for Plaintiff in Error.

ALEXANDER P. HUMPHREY,

Of Counsel.

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Supreme Court of the United States

October Term, 1913

The American Seeding Machine Co.,	} No. 556 Brief for Plaintiff in Error
—vs.— Plaintiff in Error,	
The Commonwealth of Kentucky, Defendant in Error.	

STATEMENT OF CASE

This is a Writ of Error to the Court of Appeals of Kentucky to review its judgment affirming the judgment of the Circuit Court of Barren County, Ky., by which Plaintiff in Error was convicted and fined for alleged violation of Secs. 3915 and 3941a of the Kentucky laws, commonly known as the Kentucky Anti-Trust Statutes, and which are printed as an appendix.

The Writ of Error is based on two propositions, (a) that the Kentucky Statutes in question are in conflict with the 14th amendment, and (b) that the particular transactions upon which the conviction is grounded were transactions of interstate commerce and protected from such state regulation by Art. I., Sec. 8. (Assignment of Errors, R. 232-234.)

While the first proposition has recently been settled affirmatively by this court in the International Harvester cases, it is hoped the court will pass upon the second proposition, which is of general interest, and of special importance to Plaintiff in Error, in

view of future legislation in Kentucky and other states.

The petition in the trial court (R. 1) charged the Machine Company with unlawfully combining with certain other companies therein named for the purpose of controlling the price of certain agricultural implements *manufactured by it and by such other companies*; and that within one year before the filing of the petition it did control such price, and did enhance the price of such implements above their real value, and offered for sale, and did sell the same in said Barren County within one year before the filing of the petition at a price in excess of their real value, "all in violation of the statutes in such case made and provided."

The Machine Company demurred to the petition as not stating a cause for action, and assigned specifically that the Kentucky statutes in question were in conflict with the 14th amendment for want of due process and equal protection. (R. 5 and 6.)

The trial court overruled the demurrer, and the Machine Company excepted (R. 5); and thereupon entered a plea of not guilty, and the case went to trial before a jury.

At the conclusion of the evidence for the Commonwealth, the Machine Company moved (R. 9) for peremptory instructions in its favor, assigning that the Kentucky Statutes conflicted with the Constitution of the United States upon two grounds, (a) upon the ground stated in support of the demurrer above referred to, and (b) upon the ground that the transactions shown by the evidence were transactions of interstate commerce and within the protection of the commerce clause of the Constitution.

The trial court refused the request for peremptory

instructions, to which the Machine Company excepted. (R. 10, at top.)

At the conclusion of all the evidence, the Machine Company renewed its request for peremptory instructions upon the same grounds, which the court again refused to give, and the Machine Company again excepted. (R. 10.)

Thereupon the trial court gave to the jury, at the request of the Commonwealth, instructions 1 and 2, to which the Seeding Machine Company objected and excepted (R. 10 and 11) by which the jury were instructed in substance that if the Seeding Machine Company, at any time however remote before the filing of the petition, combined with the other companies, or any of them, for the purpose of regulating the price of articles *manufactured by themselves*, and enhanced the price of the same above their real value, and that in pursuance thereof within one year before the filing of the petition, and, "under substantially the same market conditions that existed before the advance in price," sold any of such machinery in Barren County, Kentucky, at more than its real value, the defendant was guilty; and that the only elements to be considered by the jury, in justifying the increase in price, were "increased cost of labor or material, if any, in producing said machinery"; thus eliminating from the consideration of the jury improvements in construction, increased cost of overhead charges, and selling organization, and all general changes in the purchasing power of a dollar.

The jury having brought in a verdict of guilty, and fixed the fine at \$500.00, judgment was entered accordingly and the Machine Company moved for a new trial, upon the two grounds last stated, among others. (R. 7 and 8.) The court overruled the motion, to which exception was reserved (R. 8), and the

Machine Company prayed an appeal to the Court of Appeals of Kentucky, which was allowed. (R. 8.)

In the Court of Appeals the Machine Company assigned as error the overruling by the trial court of the several constitutional objections above mentioned (R. 215); but that court (R. 216) found there was no error in the judgment, and affirmed the same. Thereupon the Machine Company filed its petition for a Writ of Error from this court (R. 226); and the same was duly allowed. (R. 228.) In the assignment of errors in this court, the same grounds of conflict with the federal constitution are assigned. (R. 232-234.)

SPECIFICATION OF ERRORS RELIED ON

1. The trial court erred in overruling the demurrer filed by this Plaintiff in Error to the petition; and the Court of Appeals erred in affirming the ruling of said trial court upon said demurrer.

2. The trial court erred in refusing to instruct the jury peremptorily in favor of this Plaintiff in Error, as requested at the conclusion of the evidence of the Plaintiff below, and also at the conclusion of all the evidence, upon the following grounds; and the Court of Appeals of Kentucky erred in affirming the action of said trial court in refusing to give such instruction.

"No. 5. Because section 3915 and 3941a of the Kentucky Statutes, as construed by the Court of Appeals of Kentucky and upon which the action is based, are in conflict with the Constitution of the United States, and particularly with the 5th and 14th amendments thereof, because (a) said acts as so construed operate to deny this defendant the equal protection of the law; (b) said acts as so construed operate to deprive this defendant of its property and subject it to fine without due process of law." (R. 9.)

3. The trial court erred in refusing to instruct the jury peremptorily in favor of this Plaintiff in Error, as requested in the following instruction, which was asked to be given at the conclusion of the evidence of the Plaintiff below, and also at the conclusion of all the evidence; and the Court of Appeals of Kentucky erred in affirming the action of said trial court in refusing to give such instruction.

"No. 4. The defendant moves the court to instruct the jury to find it, the defendant, not guilty, upon the ground that the only transaction of the defendant during the year preceding the filing of the petition and the bringing of this action shown by the evidence are transactions of interstate commerce and that as applied to such transactions the Statutes of Kentucky upon which the action is founded are void, because in conflict with the commerce clause of the Constitution of the United States, viz.: Section eight of Art. one thereof, and further upon the failure of proof." (R. 9.)

4. The trial court erred in giving to the jury instructions one and two, to which the Seeding Machine Company excepted (R. 10); and the Court of Appeals erred in approving the action of the trial court in giving said instructions, which are as follows:

"No. 1. The Court instructs the jury that if they believe from the evidence to the exclusion of a reasonable doubt that the defendant, American Seeding Machine Company, before the filing of the petition herein, entered into or became a member of a pool, trust, combine, agreement, confederation, or understanding with the Hoo-sier Drill Company, Superior Drill Company, Buckeye Drill Company, or any of said companies, or any other company or corporation for the purpose of regulating, controlling, or fixing the price of fertilizers, grain drills, seeders,

transplanters, disk harrows, potato diggers, potato planters or the repairs of same, manufactured or produced by them, or any of them, and that the purpose and effect of said pool, trust, combine, agreement, confederation, or understanding, was to enhance the price of said fertilizers, grain drills, seeders, transplanters, disk harrows, potato diggers, or potato planters, or either or any of them, above their real value, and if the jury further believe from the evidence beyond a reasonable doubt that the defendant company, in pursuance of and while a member of or a party to, or in any way interested in said pool, trust, combine, agreement, confederation, or understanding, in Barren County, and within one year before the filing of the petition herein, to-wit: within one year before November 16, 1911, and under substantially the same market conditions that existed before the advance, if any, in price of said machinery or any of it, sold any fertilizer, grain drill, seeder, transplanter, disk harrow, potato digger, potato planter, or transplanter, or any of them, or repair of same, at more than their real value, then and in that event you should find the defendant guilty, and fix its punishment at a fine in any sum not less than Five Hundred Dollars, and not more than Five Thousand Dollars, in the discretion of the jury.

"No. 2. Although the jury may believe from the evidence to the exclusion of a reasonable doubt that the defendant entered into, or became a member of such pool, trust, or combine, as set out in instruction, No. 1, and that within twelve months prior to November 16, 1911, the defendant, while a member of such pool, trust, or combine, sold fertilizers, grain drills, seeders, transplanters, potato diggers, or potato planters, mentioned in instruction No. 1, in Barren County, either itself or through its agent, at a greater price than said machine was sold at before the

defendant became a member of such pool, trust, or combine, as set out in instruction No. 1, yet if they believe from the evidence that the enhancement in the price of said machinery was due solely to the increased cost of labor or material, if any, in producing said machinery, they should find the defendant not guilty." (R. 10 and 11.)

Said instructions as applied to the facts in evidence place a construction on the Statutes of Kentucky which deprived Plaintiff in Error of its property without due process and denied it equal protection of the law, in violation of the Fourteenth Amendment.

(a) Because all effects of improvements and changes in construction during a period of nine years, and all increases of overhead and selling expenses, general changes in the purchasing power of a dollar, and other important items, are eliminated in determining whether an increased price was justified, and Plaintiff in Error was deprived of the right to sell its property at its true value.

(b) Because said instructions lay down a rule containing no elements by which it is possible to determine "the real value," or to guard against criminal liability.

(c) Because said instructions establish a rule for manufacturers different from that governing farmers and others as to the prices at which they may lawfully sell their property.

BRIEF OF THE ARGUMENT

I.

The Kentucky Anti-Trust Statutes upon which the action is based are void for conflict with the Fourteenth Amendment: and the demurrer to the petition should have been sustained, the peremptory in-

structions in its favor requested by Plaintiff in Error on this ground should have been given, and the instructions given by the court to the jury are erroneous for the same reason.

Upon the proposition that the construction and operation of the Kentucky Anti-Trust Statutes, as disclosed in this Record, bring them into conflict with the Fourteenth Amendment, the case is practically identical with the cases of *International Harvester Co. v. Kentucky*, decided by this court June 8, 1914, 234 U. S. —, 34 Sup. Ct. Rep. 953.

In the case at bar, the Kentucky Court of Appeals denied the proposition in the following language:

"The first ground, relied upon for reversal, to-wit: that sections 3915 and 3941a are violative of the Fifth and Fourteenth Amendments to the federal constitution, was considered at length by this court, in *International Harvester Co. v. Commonwealth*, 131 Ky. 551. We adhere to the opinion there expressed and hold, for the reasons therein stated, that these sections of the Kentucky Statutes are not in conflict with either the Fifth or the Fourteenth Amendment to the federal constitution, or with any other provision thereof." (R. 218-219.)

The recent decision of this court sustaining the proposition renders any argument of it unnecessary; but it may be proper to state the facts in evidence to show the actual operation of the Kentucky Statutes in this case.

The petition was filed November 16, 1911, and complained of transactions during the year preceding. (R. 2.) The "combination" proved was effected in 1903. (R. 21.) It consisted in the organization of a New Jersey corporation called American Seeding Machine Co., which acquired the businesses and property of five theretofore existing corporations,

each of which was engaged in the manufacture of certain agricultural implements, the chief line of manufacture of each being the grain drill.

The new company had an authorized capital of \$7,500,000.00 7 per cent preferred stock, and a like amount of common. It issued \$6,034,000.00 of the preferred and a like amount of the common in payment for the properties, assets and businesses of the five companies absorbed, the preferred stock being issued at par for the actual value of the tangible assets transferred to it, and the common stock being in the nature of a bonus, or as representing good will. (R. 54, 99 and 176.) The businesses acquired had been established for between forty and fifty years, and had established trade names of great value for their various lines of goods. (R. 207, 190 and 176.)

The New Jersey corporation issued further \$382,500.00 of its preferred stock for cash at par, the preferred being accompanied by a like amount of common as a bonus; thus making a total stock issue by the New Jersey Company of \$6,416,500.00 preferred and a like amount of common, the preferred being based on actual values of cash and tangible assets, and the common representing good will.

In March, 1906, (the double liability of stockholders having been eliminated from the Ohio law) the Plaintiff in Error, an Ohio corporation, was formed with an authorized capital of \$5,000,000.00 common and \$2,500,000.00 six per cent preferred stock. The Ohio corporation acquired the business, assets and property of the New Jersey corporation (which was then of the value of \$7,000,000.00 [R. 192]), and issued therefor its \$5,000,000.00 of common stock, and \$1,416,500.00 of its preferred stock, making a total of \$6,416,500.00, the exact amount of the preferred stock issued by the New Jersey corporation, the com-

mon stock of the New Jersey corporation being extinguished without any consideration ever having been received by the holders thereof. (R. 177.) The remainder of the authorized preferred stock of the Ohio corporation (\$1,830,500.00) was afterwards issued for cash at par, and the proceeds invested in the business. (R. 177 and 178.)

The New Jersey corporation in 1905, and before the transfer to the Ohio corporation, purchased a small establishment at Springfield, Ohio, which was engaged in the manufacture of potato planters, a line of implements not manufactured by any of the five companies which had been merged into the New Jersey company (R. 79); and in 1910 the Ohio corporation purchased, at receiver's sale in the United States Court, the plant and assets of the Mast Company, another grain drill manufacturing company located at Springfield, Ohio, and which had failed in business. (R. 210 and 211.)

In 1908 the Ohio company abandoned and disposed of its plants at Louisville, Kentucky, at Shortsville, New York, and at Marion, New York, and moved the business of the Louisville and Shortsville plants to its plant at Richmond, Indiana, and moved the business of the Marion plant to Springfield, Ohio; and since 1908 its business has been exclusively conducted at Richmond and Springfield, the Springfield and Richmond plants being enlarged at an expenditure of \$1,200,000.00. (R. 47, 187 and 184.)

The economy of manufacture thus secured was largely offset by the great increase in the variety of machines and number of sizes required by the trade. (R. 87-88.)

This combination of drill manufacturers secured no monopolistic control of the grain drill business, There were some twenty other companies manufac-

turing similar grain drills, seeking trade throughout the United States, and with a capacity to furnish the entire demand of the trade. (R. 92, 186 and 191.) The combination originally represented from forty-five to fifty per cent of the business. (R. 56.) Since the combination, the volume of the business of the new company has greatly increased; but this increase is due to an increased use of seeding machines, (R. 122) the proportion of the business controlled by the consolidated company being less in 1911 than it was when the combination was formed in 1903. (R. 123.)

In Kentucky the evidence disclosed that other makes of similar grain drills were constantly on the market, so that no one desiring a seeding machine was compelled to buy of the Defendant company. (R. 128, 140, 162, 163, 168 and 169.)

The catalogues of twelve of these competing companies, manufacturing practically the same line of goods, were found in the hands of the dealers in Barren County, Kentucky, and introduced in evidence. (R. 32-33.)

The combined company maintained constantly an experimental department costing annually as high as \$140.00, in which it employed from thirty to forty men, who were engaged constantly in devising improvements in its machines. (R. 94-95.) The machines had been very generally changed in construction since 1903. (R. 92-94 and 152-3.) Some of them had been entirely reconstructed so that there was little, if any, resemblance between the machine of 1911 and the machine of 1903. (R. 92.) These improvements vastly increased the efficiency of the goods in the hands of the farmer. An illustration is found in the case of the fertilizer attachment, which on the 1903 machine could only be changed to sow three or four different quantities of fertilizer, and the

change was made by stopping the drill and adjusting a set of cog wheels; while the 1911 machine carried a fertilizer attachment which would give sixteen different quantities of fertilizer, and the change could be made instantly without stopping the drill. (R. 119.)

These improvements in construction made the drill worth \$5.00 to \$10.00 more. (R. 36 and 174.)

The evidence showed a general advance in the cost of everything, a general change in the purchasing power of a dollar (R. 37 and 185); and the increased cost of factory labor, lumber, rubber and other materials entering largely into the construction of these drills, is fully shown throughout the record, as well as the increased cost of selling and marketing the goods.

The evidence disclosed that sixty per cent of the total expense is attributable to the manufacture or the production of the goods ready for the selling department, and that three-fourths of this sixty per cent is attributable to the direct cost of manufacture, that is the cost of labor and material used in producing the goods. (R. 120.)

When the combination was formed in 1903, the prices for 1903 had already been fixed by the various companies entering into the combination, and the new company fixed the prices for the year 1904. (R. 90 and 91.)

The new company for 1904 proceeded to harmonize the prices, as between the different lines of goods it had acquired, and in so doing it reduced the higher prices, and made no increases. (R. 90.) There is much testimony scattered through the record as to changes in prices, but the whole matter was finally covered on the trial by a tabulated statement prepared by the president of the defendant, and offered

in connection with his testimony, (R. 206) and which was conceded to be correct. (R. 208.) From this it will appear that reductions of from \$2.00 to \$6.00 per drill were made to bring about a harmony in the prices of the various lines. The sheet shows subsequent advances in price over the prices of 1904, aggregating \$7.50 on the larger sized drill, and \$9.50 on the smaller sized drill; but accompanied with an increase in the rate of discount from five per cent to seven per cent. The greater increase in the price of the smaller sized drill was justified because the trade has all been running to the larger sizes, and the smaller sizes, which are a popular size in hilly countries, such as Barren County, Kentucky, are proportionately more expensive to manufacture and sell. Indeed, there is no profit in them and they are only carried to please the trade and hold it for the larger sizes. (R. 88, 89 and 90.)

The defendant company made no change in the price of its corn drill; because changes in the construction of that drill made it less expensive to manufacture, and they found the margin of profit sufficient without changing the price. (R. 120.) On the other hand the highest per cent of increase in price made by the defendant company was in corn planters in which it had an insignificant proportion of the trade, about five per cent. (R. 122.)

In the matter of repairs no change in price was made until 1910, when the company realized that the old prices needed revision to harmonize them, as well as by reason of changes in the repairs themselves. The company carried about 10,000 different repair parts, and increases were made in the price of about 1,400, decreases were made in the price of about 500, and the balance remained unchanged. (R. 203 and 204.)

Although the percentage of business controlled by the defendant company differed in different parts of the country, (it havng but about one-third of the business in the northwest [R. 190 and 191]) its prices were uniform both throughout the United States, and for its foreign trade. (R. 81-82, 207-208.)

The defendant company offered its principal officers as witnesses upon the trial, and made full disclosures of its business. Its treasurer produced, and offered in evidence, in connection with his testimony, a tabulated statement showing its entire financial history, and the detailed financial results of its operation from the time of the formation of the New Jersey company to the time of the trial, disclosing all earnings, all expenditures and all dividends. This statement is found between pages 194 and 195 of the record, disclosing an average yearly book earning of less than five per cent on the capital employed in the business, and an average yearly dividend of less than two and one-half per cent, the New Jersey company not having been able to earn the dividends on its preferred stock, and the Ohio company having made but few dividends on its common stock.

Further explanation of this financial sheet, and of the financial operations of the company. is found in the testimony of its treasurer, Mr. Westcott. (R. 175 *et seq.*) Among other things, Mr. Westcott shows that if the business done in 1911 had been done on the prices of 1904, the result would have been a book profit of \$200,000.00 as the earning in an exceptionally prosperous year on about \$9,000,000.00 then invested in the business. (R. 184.) These book earnings would be subject to discount for cash (R. 185) and only one-half of them would be available for dividends. (R. 58 and 183.) The salaries of the principal officers were also disclosed, showing that of the

president to be \$7,500.00, and the aggregate of all the salaries \$30,000.00. (R. 186.)

From these facts, we submit, it appears that there was no monopolistic combination. The combination necessarily secured the power to fix the prices of the goods manufactured by itself; but it did not secure the power to force the public to pay unreasonable prices, because it did not control the trade in grain drills.

It will be noted the charge in the petition is only that the defendant had the power to control the prices of goods manufactured by itself, and by the other companies mentioned in the petition; but since the evidence showed that the combination was effected by acquiring the business of the other companies, the charge, as proved, is that it secured the power to fix the price of its own goods. The court was asked to charge the jury that it was an essential element of the crime to show that a monopolistic combination had been formed, but such a charge was refused. (R. 11.)

The court was further asked to charge (R. 12) that a manufacturer was entitled to the additional value, if one existed, by reason of the good will attached to his goods, and acquired by their reputation as honest, desirable and efficient goods; but the court refused such instruction.

The court was further asked to charge (R. 12) that a manufacturer was entitled to charge such prices as would secure him a fair return on his capital invested in the business; but that charge was also refused.

In short, the jury were instructed that if there had been a consolidation of several companies engaged in the drill business, no matter how small a per cent of the trade was represented by the combination, any increase in prices, however remote from the time of

the combination, was criminal unless justified by an increased cost in the labor and material entering into the goods, no matter how much the value of the goods had been increased by changes in construction, no matter how much the expense of selling them had been increased, and no matter whether changed conditions made it possible to conduct the business at the old prices or not.

The case, we submit, is much stronger than that of the International Harvester Company; because that company did not deem it necessary to make the full and complete disclosures about its business that were made by the American Seeding Machine Company.

II.

The transactions of Plaintiff in Error upon which the conviction is based were transactions of interstate commerce; and as applied to such transactions the Kentucky Statutes in question are in conflict with Art. I, Sec. 8, of the constitution.

On this branch of the case the facts are essentially different from, (though in most particulars resembling) those disclosed in *International Harvester Co. v. Kentucky*, decided by this court June 22, 1914, and reported 234 U. S. —, 34 Sup. Ct. Rep. 944. But the question here presented is entirely different. In that case the only question raised was by motion to quash the service, and upon the overruling of that motion the Harvester Co. failed to appear or plead, and judgment was entered against it by default; while in this case no question was made as to the validity of service, but the Seeding Machine Co. pleaded "not guilty," and claimed its immunity under the commerce clause of the constitution in every way possible under the Kentucky practice.

The facts on this branch of the case are as follows:

As heretofore stated, the Seeding Machine Company abandoned the manufacture of goods in Kentucky in 1908, and moved that branch of its business to Richmond, Ind. (R. 47, 79.)

Thereafter it maintained no place of business in Kentucky; but in supplying its customers in Kentucky, the goods were shipped from Richmond, Ind., or Springfield, Ohio, in car-load lots to Louisville, Ky., to a transfer company, which transferred and re-shipped in less than car-load lots to the customers for whom the goods were destined at other points in Kentucky. (R. 187-188.) This course was adopted solely to secure the car-load freight rate, and to protect the goods from damage in shipment. (R. 123.) If the customer at a point other than Louisville, ordered a car-load, or if a car-load could be made up for several customers at the same point, the shipment was made directly from the factory to the ultimate destination. (R. 170.) No goods were shipped to Kentucky except to fill orders previously obtained. (R. 18, 123.)

The Seeding Machine Co. had traveling agents in Kentucky who solicited trade for it; and wrote up a contract when a customer was secured; but the contract was sent to Springfield, Ohio, or Richmond, Ind., for approval, and was not valid until so approved. (R. 76.) The traveling agent had nothing to do with delivering the goods. He simply wrote up the contract, signed it with the customer, and sent it to the company at Richmond or Springfield for acceptance. (R. 17.) Neither did he attend to collections, or settlements, unless special circumstances required special attention. The settlements were generally made with the company directly, by mail. (R. 35.)

"The only evidence offered by appellee (the Commonwealth) to show a sale in Barren County is the following writing entered into between Geo. D. Rogers, representing the appellant, and Dickey & Co., a firm of merchants at Glasgow, Kentucky." Opinion of Court of Appeals (R. 219.)

Rogers was one of the Seeding Machine Co.'s traveling agents, and this writing was signed by him and by Dickey & Co. at Glasgow, November 26, 1910. (R. 219.) It was forwarded to Richmond, Ind., for acceptance, and there accepted and a copy mailed to Dickey & Co. with an appropriate letter, November 30, 1910. (R. 125-126.) The contract on its face provides for shipment from Richmond, Ind., of the goods purchased, and this fact also appears elsewhere in evidence. (R. 18.)

Whether the facts of this case would be held sufficient to bring the Seeding Machine Co. into Kentucky for the purposes of service of process is a question not presented by this record. A company (like an individual) engaged in interstate commerce between two adjoining states must appear in one or the other of them, and may appear in both of them, without in any degree affecting the nature of the business as interstate commerce. And, on the other hand, the nature of the business a company is engaged in does not at all affect the question whether the company is personally present in the state so as to be subject to service of process in that state. But the power of a state to regulate the business of a company so present in the state, if that business is interstate commerce, is an entirely different matter.

It would be idle to present an argument on the question of the power of a state to *regulate the prices* at which goods could be sold in interstate commerce. If any argument on that question were permissible,

we would adopt the exhaustive opinion of Mr. Justice Hughes in *The Minnesota Rate Cases*, 230 U. S. 352, pages 398 to 410.

We could, of course, cite numerous decisions of this court, denying the power of a state to tax interstate commerce or to regulate the rates of freight. But we know of no prior instance in which a state has assumed to regulate *the price at which the goods could be sold*.

As heretofore stated, the question of monopolistic control was not made an element of the offense. True, the Court of Appeals says in its opinion: (R. 222.)

"It may be, and doubtless is, true that there are other seeding machine companies capable of supplying large territories with needed seeding machinery; but the evidence does not show that they are competitors for the Kentucky trade, or engaged in the manufacture of seeding machinery suitable to the wants and necessities of the Kentucky farmer."

This statement of the court, however, is directly contradicted by the record. (R. 32-33, 128, 140, 162, 163-4, 168-9.) The evidence directly establishes that there were other drills on the market in Barren County, Ky., as good as ours and suitable to the same purposes. The evidence came partly from the witnesses of the Commonwealth and partly from our witnesses, and there was no contradictory evidence. Certainly there was sufficient to entitle the Seeding Machine Co. to have the question submitted to the jury, by the instructions requested and refused. (R. 11.)

But if monopolistic control had been shown, the interstate commerce question would be the same. The Sherman Act expresses the will of Congress on the subject, and the regulations therein contained are exclusive, and are to be enforced in the Federal

Courts exclusively. (*So. Ry. Co. v. Reid*, 222 U. S. 424.) By no other means could uniformity of treatment as between the states be secured.

The Court of Appeals of Kentucky did not differ with us on the proposition that the Kentucky Statutes in question were invalid as applied to transactions of interstate commerce. In its opinion (R. 219) the court says:

"As to the claim that the transaction, out of which the prosecution arose, was an interstate transaction, it is conceded by counsel for appellee that, if it was, the case must be reversed."

The court then proceed to state that the only evidence offered to show a sale in Barren County was a written contract with Dickey & Co. (which they quote in full [R. 219]), and that the question whether the transaction was interstate commerce or not depended on the question whether the contract of sale was consummated in Kentucky or not. The court here seems to confuse the interstate commerce question with another question raised by the defendant, viz., that the venue of the action was wrongly laid, since no sale was made in Barren County, Ky. The court say: (R. 220.)

"The second and fourth grounds relied upon for reversal may be considered together, for, if no sale was made in Kentucky, as evidenced by the foregoing writing, it is admitted that this transaction was an interstate transaction and not controlled by the sections of the Kentucky Statutes quoted."

The court proceed then to analyze the contract and to determine that, although the contract required for its validity the approval of the home office in Richmond, Ind., yet that ratification, when given by letter, operated the same as a prior authorization; and in conclusion on this point, the court say: (R. 222 at top.)

“Appellant’s contract evidences a sale by it of certain machinery in Glasgow, Barren County, Kentucky, within the time covered by the suit, and the sale having been completed in Kentucky, the claim that it is an interstate transaction is of no avail.”

This proposition is, we think, manifestly unsound. Citizens of Ohio and Kentucky, in order to enjoy the protection of the commerce clause, are not required to conduct their negotiations by mail; nor, if a personal interview is desired, must it take place in the center of the Ohio River. The same transaction cannot be interstate commerce as to one state and not as to the other, according to in which state the contract of sale is made; for “in interstate commerce there are no state lines.” *Oklahoma v. Kansas Natl. Gas Co.*, 221 U. S. 229.

The owner in Ohio may take his goods with him into Kentucky for sale, and there sell them in the *original packages*, and enjoy the protection of the commerce clause in the transaction.

Litsy v. Hardin, 135 U. S. 100.

Adams Ex. Co. v. Ky., 206 U. S. 129.

Recent congressional action extending the power of the states as to intoxicants, does not affect the principle as applied to this case.

When the goods are sold before shipment, the original package doctrine has no application. That doctrine only applies when the goods are shipped into the state to be sold after arrival there.

Rearick v. Penn., 203 U. S. 507.

Caldwell v. North Carolina, 187 U. S. 622.

In *Dozier v. Alabama*, 218 U. S. 124, an agent in Alabama solicited for his principal in Illinois orders for pictures, which were sent to the agent for delivery in a suitable frame, there being no previous order

for the frame; but it was hoped the agent could do a little more business for his principal, under the circumstances, by selling the frame. The state court sustained a state tax on this business on the ground that the frame being shipped into the state to be sold after arrival, and not in the original package, that part of the transaction was not interstate commerce.

This court reversed, saying: (Id. 1st Syl.)

"The protection of the commerce clause of the Federal Constitution extends beyond the strict lines of contract, and inseparable incidents of a transaction of interstate commerce based upon contract are also interstate commerce."

The proposition that the protection does not extend to the contract itself, and is not available in the state in which the bargain is concluded, pursuant to which the goods are transported from one state into the other, as advanced by the Court of Appeals of Kentucky in this case, is a novelty, the bare statement of which, it seems to us, is sufficient to refute it.

Respectfully submitted,

J. E. Bowman,

For Plaintiff in Error.

Alexander Pope Humphrey,
Of Counsel.

APPENDIX

KENTUCKY STATUTES AND DECISIONS CON- STRUING SAME

1. ACT OF MAY 20, 1890.

(Sections 3915 and 3917 Carroll's Kentucky Statutes.)

"Sec. 3915. That if any corporation under the laws of Kentucky, or under the laws of any other state or country, for transacting or conducting

any kind of business in this state, or any partnership, company, firm or individual, or other association of persons, shall create, establish, organize or enter into, or become a member of, or a party to, or in any way interested in any pool, trust, combine, agreement, confederation or understanding with any other corporation, partnership, individual or person, or association of persons, for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured article, or property of any kind, or shall enter into, become a member of, or party to, or in any way interested in any pool, agreement, contract, understanding, combination or confederation, having for its object, the fixing, or in any way limiting the amount or quantity of any article of property, commodity or merchandise to be produced or manufactured, mined, bought or sold, shall be deemed guilty of the crime of conspiracy, and punished therefor as provided in the subsequent sections of this act."

"Sec. 3917. If any corporation, company, firm, partnership or person, or association of persons, shall, by court of competent jurisdiction, be found guilty of any violation of any of the provisions of this act, such guilty party shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars. Any president, manager, director or other officer or agent, or receiver of any corporation, company, firm, partnership, or any corporation, company, firm or association, or member of any corporation, firm or association, or any member of any company, firm or other association, or any individual, found by a court of competent jurisdiction, guilty of any violation of this act shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or may be imprisoned in the county jail not less than six months nor more than twelve months, or may be both so fined and imprisoned in the discretion of the court or jury trying the case."

2. SECTION 198—KENTUCKY CONSTITUTION—SEPTEMBER 28, 1891.

"Sec. 198. *Trusts and Combinations to be Suppressed.* It shall be the duty of the General Assembly from time to time, as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value." (Carroll's Ky. Stat., p. 145.)

3. ACT OF MARCH 21, 1906.

(Kentucky Acts 1906, Chap. 117, p. 429, Carroll's K. S., Sec. 3941a.)

"An Act permitting persons to combine or pool their crops of wheat, tobacco and other products and sell same as a whole, and making contracts in pursuance thereof valid.

"Sec. 1. It is hereby declared lawful for any number of persons to combine, unite or pool, any or all of the crops of wheat, tobacco, corn, oats, hay, or other farm products raised by them, for the purpose of classifying, grading, storing, holding, selling or disposing of same, either in parcels or as a whole, in order or for the purpose of obtaining a greater or higher price therefor than they might or could obtain or receive by selling said crops separately or individually.

"Sec. 2. That contracts or agreements made or entered into by persons with each other, the object or intent of which is to unite, pool or combine all or any of the crops of tobacco, wheat, corn, oats, hay, or other farm products, raised by such persons, for the purpose of classifying, grading, storing, holding, selling or disposing of said crops, or any of them, either in parts or as a whole, in order, or for the purpose of obtaining a better or higher price therefor than could or might be obtained by selling said crops separate-

ly or individually, are hereby permitted, and shall not, because of any such combination or purpose of said persons, be declared illegal or invalid.

"Sec. 3. Such persons so entering into such agreement or contract as is set out in the foregoing sections, are hereby permitted to select an agent or agents through or by or with whom said parties so entering into such agreements may classify, grade, store, hold, sell or dispose of said crops, or any of them, and said agent or agents shall have the right to take, receive, hold, store, classify, grade, sell or dispose of said crops so placed in such agreement, as directed or authorized by their principal, for the purpose of accomplishing the object of such combination or agreement between such principals, and contracts and agreements entered into by such agent or agents for the purpose of classifying, grading, storing, holding, selling or disposing of said crops so combined, united or pooled, either in parcels or as a whole, are hereby permitted, and shall not, because of any such combination or purpose of such original agreement of such principals so entering into said combination, or of such agent or agents, be declared illegal or invalid.

"Sec. 4. Whereas, many persons of this Commonwealth now desires to combine their respective crops of tobacco, wheat, corn, oats, hay and other farm products, an emergency is now declared to exist which requires that this act should, and it shall, take effect from and after its passage and approval by the Governor."

4. **ACT OF MARCH 13, 1908.**

(Kentucky Acts 1908, Chap. 8, p. 38, K. S., Sec. 3941a.)

"An Act to amend Section 3 of an act of the General Assembly of Commonwealth of Kentucky, approved March 21, 1906.

"Sec. 1. That section 3 of an act entitled, An act permitting persons to combine or pool their crops of wheat, tobacco and other products and sell same as a whole, and making contracts in pursuance thereof valid, approved March 21, 1906, being Chapter 117 of the acts of the General Assembly of the Commonwealth of Kentucky for the year 1906, be and the same is hereby amended and re-enacted so as to read as follows (quoting said Act and then adding the following):

"All contracts heretofore made by any person or persons for the purpose set out in the foregoing sections are hereby declared valid, if otherwise legally binding on the parties. To prevent any breach or violation of any contract made for the purposes set out in the foregoing sections a restraining order and writ of injunction may be issued by proper officer, as prescribed in the Civil Code of Practice.

"For any breach or violation of any contract entered into for the purposes set out in the foregoing sections, the injured party may recover the damages sustained by him by reason of such violation of such contract of the person violating the same, and also of any person who shall induce or persuade another to violate such contract, which damages shall include the reasonable expense and attorney's fees incurred by the injured party in prosecuting an action to recover such damages, or to prevent a violation of such contract, if the party complaining shall succeed in doing so, which may be recovered in the same action or original proceeding. Said agent when so selected as herein provided shall have the sole right to sell said crop so pooled or combined, and it shall be unlawful for any owner of such crop to sell or dispose of same and for any person to knowingly purchase the same without the written consent of such agent, and upon conviction thereof he or they shall be fined in any sum or

amount not exceeding \$250.00 for each offense, to be fixed by the jury in their discretion.

"Sec. 2. Whereas, many crops of tobacco and other products have been combined and pooled in this state, under contract and agreement entered into for the purposes set out in the above section, an emergency is now declared to exist, which requires that this act should and it shall take effect from and after its passage and approval by the Governor."

The act of 1906 is construed to be an amendment of the act of 1890, and the said acts, when read in connection with Sec. 198, Kentucky Constitution, are held to permit monopolies, but to forbid sales at prices above the "real value."

Burley Tobacco Society v. Brumback, 128 Ky. 137.

Commonwealth v. I. H. Co., 131 Ky. 551.

The "real value" is defined to be what the goods would have sold for on the market, if no combination had been formed.

I. H. Co. v. Ky., 137 Ky. 668.

Same v. Same, 144 Ky. 403.

Prices prevailing before combination are held to be "real value"; and any subsequent increase in price under substantially the same "market conditions" are presumed to be criminal, and to be justified solely by increased cost of labor and material.

Cases cited *supra*.

I. H. Co. v. Kentucky, 147 Ky. 564.

In cases of tobacco growers contrary presumption prevails.

Tobacco Society v. Brumback, 128 Ky. 137.

Commonwealth v. Hodges, 137 Ky. 233.

Collins v. Commonwealth, 141 Ky. 565.

AMERICAN SEEDING MACHINE COMPANY *v.*
COMMONWEALTH OF KENTUCKY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF
KENTUCKY.

No. 175. Argued March 5, 1915.—Decided March 15, 1915.

International Harvester Co. v. Kentucky, 234 U. S. 216, followed to effect that §§ 3915 and 3941, of the Kentucky Anti-Trust Statutes, are invalid under the due process provision of the Fourteenth

236 U. S.

Opinion of the Court.

Amendment because, as construed by the Court of Appeals of that State, they offer no standard of conduct that it is possible to know. 152 Kentucky, 589, reversed.

THE facts, which involve the constitutionality under the Fourteenth Amendment of certain provisions of the Anti-trust Act of the State of Kentucky, are stated in the opinion.

Mr. J. E. Bowman, with whom *Mr. Alexander Pope Humphrey* was on the brief, for plaintiff in error.

There was no appearance or brief filed for defendant in error.

Memorandum opinion by MR. JUSTICE McKENNA, by direction of the court.

Plaintiff in error was convicted in the Circuit Court of Barren County, Kentucky, and fined for alleged violation of §§ 3915 and 3941 of the Kentucky laws commonly known as the Kentucky Anti-trust Statutes, and prosecutes this writ to review the judgment.

The grounds of error assigned are: (1) That the statutes in question are in conflict with the Fourteenth Amendment to the Constitution of the United States; (2) That the particular transactions involved were transactions of interstate commerce and protected from state regulation by the Commerce Clause of the Constitution of the United States.

These grounds were presented to the lower court first by demurrer, which was overruled, and, after answer and trial to a jury, by a request for peremptory instructions for defendant.

The sections of the laws of Kentucky referred to were declared to be invalid by this court under the Fourteenth Amendment because they, as construed by the Court of

Appeals of the State, offered no standard of conduct that it is possible to know. *International Harvester Co. v. Kentucky*, 234 U. S. 216. Therefore, the judgment of conviction against plaintiff in error must be reversed.

It is not necessary to pass on any other question.

Judgment reversed.